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ABSTRACT

The living and working conditions of migrant farmworkers on the Eastern Shore of Virginia have been described as deplorable and possibly the worst in the nation. At the same time, growers in this region have complained of duplication, even triplication, of federal and state regulations designed to improve living and working conditions of these farmworkers and to protect their civil rights. A 1982 forum sponsored by the Virginia Advisory Committee to the United States Commission on Civil Rights and attended by government officials, growers, crewleaders, migrant farmworkers, and community service providers considered migrant living/working conditions, eligibility for programs/services, current levels of service, and civil rights problems/provisions, and made recommendations to improve conditions. Findings revealed that because no uniform method of counting/tracking migrants exists, planning programs and enforcement procedures is difficult; because growers refuse to recruit migrants through Virginia's Employment Commission, migrant protection is reduced; because many migrants are paid less than minimum wage and crewleaders fail to document/maintain wage records, migrants have difficulty qualifying for unemployment insurance; poor housing, poor nutrition, alcoholism, lack of recreation, and isolation adversely affect migrants' physical/mental health; and Virginia migrant education programs meet or exceed federal requirements. Agency responses are appended. (NEC)

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Migrant Farmworkers on Virginia's Eastern Shore

November 1983

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The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

PREFACE

The living and working conditions of migrant farmworkers on the Eastern Shore of Virginia have been described as deplorable[1] and possibly the worst in the Nation[2] for such workers. At the same time, growers on the Eastern Shore have complained of "duplication, even triplication"[3] of Federal and State regulations designed to improve living and working conditions of these farmworkers and to protect their civil rights.

Since the Great Depression in the 1930s, the Federal government has played the major role in providing laws, programs, and financial assistance to improve the living and working conditions of the U.S. population through a wide range of social, economic, and educational programs. Despite these efforts, however, the living and working conditions of migrant workers, many of whom are members of minority groups that have traditionally encountered discrimination, have improved very little.[4]

To examine this persistent phenomenon, the Virginia Advisory Committee held a forum on August 3, 1982, in Painter, Virginia, located in Accomack County on the Eastern Shore. The meeting attracted Federal, State, and local government officials, growers, crewleaders, migrant farmworkers, and various community groups that provide services that benefit migrant workers.

Among the topics covered at the August forum were the living and working conditions of migrant farmworkers, their eligibility for programs and services on the Eastern Shore, current levels of service, civil rights problems of migrant farmworkers, civil rights provisions in the administration of Federal and State

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[1] *Washington Post*, "An Endless Season: Migrants of the East," August 23–27, 1981.

[2] Michael T. Robinson, staff attorney, Eastern Shore Legal Aid Center, in *Forum on Ideas for the Design and Implementation of Federal Block Grant Programs to Meet the Needs of Migrants and Seasonal Farmworkers*, Painter, Virginia, unpublished transcript, August 3, 1982, pp. 181–189 (hereinafter cited as Transcript).

[3] E. Philip McCaleb, chairman, Migrant and Seasonal Farmworkers Commission, Commonwealth of Virginia, statement to members of the Virginia Advisory Committee, U.S. Commission on Civil Rights, at its meeting held in Richmond, Virginia, at the John Marshall Hotel on May 20, 1982.

[4] See, U.S. Congress, House of Representatives, Committee on

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programs and services affecting migrant farmworkers (including the Federal block grant programs created by the Omnibus Budget Reconciliation Act of 1981),[5] and recommendations to improve living and working conditions of migrant farmworkers.

Banking, Finance and Urban Affairs, *Migrant and Seasonal Farmworker Housing in the United States*, 97th Cong., 1st Sess., 1981 (hereinafter cited as *Migrant and Seasonal Farmworker Housing)*; U.S. Commission on Civil Rights, North Carolina Advisory Committee, *Where Mules Outrate Men: Migrant and Seasonal Farmworkers in North Carolina*, May 1979; U.S. Commission on Civil Rights, Idaho Advisory Committee, *A Roof Over Our Heads: Migrant and Seasonal Farmworkers Housing In Idaho*, 1980; U.S. Commission on Civil Rights, Iowa Advisory Committee, *How Far Have We Come: Migrant Labor in Iowa*, 1976.

[5] Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, §§1-2765, 95 Stat. 357.

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Chapter 1

Introduction

The first problem to be resolved in a study of migrant workers is that of definition. A uniform definition, accepted by all Federal, State, and local agencies and programs, does not exist.[1] In this report, unless otherwise specified, a migrant worker is:

> any individual. . .who passes seasonally from one place to another for the purpose of employment, who is not a year-round employee, and who occupies living quarters other than his permanent home during the period of such work.[2]

Similarly, an accurate, generally accepted count of migrant workers in Virginia or any other State is unavailable.[3] The U.S. Department of Agriculture cautions that data on migrant workers it collects is unreliable because of:

> inability to obtain information about all cases in the sample, definitional difficulties, differences in the interpretation of questions, respondents' inability or unwillingness to provide correct information, inability of respondents to recall information. . . .[4]

One estimate is that approximately 5,300 persons are hired as migrant farmworkers in Virginia each year.[5] These workers are recruited primarily in Florida, Texas, Mexico, Jamaica, and Haiti.[6] About half of the migrant farmworkers are recruited for the Eastern Shore of Virginia.

Of the approximately 2,600 migrant farmworkers arriving on the Eastern Shore each year, about 62.3 percent are from Florida, 6.4 percent from Texas, and 10.5 percent from other parts of Virginia.[7] The remaining 21.8 percent are recruited from New York and other States in the eastern migrant stream (which extends from Florida to Maine), and from foreign countries, mainly Mexico and Haiti.[8]

Nationally, according to U.S. Department of Agriculture data, about 62 percent of all migrant farmworkers are white, 11 percent are black and other races, and 27 percent are Hispanic.[9] But the racial composition of migrant farmworkers both on the Eastern Shore and the rest of Virginia is about 78

[1] E. Philip McCaleb, Transcript, p. 83; Jennifer Ruducha, nurse coordinator, Delmarva Migrant Health Project, Transcript, p. 142; U.S. Commission on Civil Rights, *Living and Working Conditions of Mushroom Workers*, July 1977, p. 5; U.S. Department of Agriculture, *The Hired Farm Working Force of 1979*, Agricultural Economic Report Number 473, August 1981, pp. 4–5 (hereinafter cited as *Hired Farm Working Force*).

[2] Va. Code §32.1-203(3) (1950).

[3] Kevin Boyd, executive director, Migrant and Seasonal Farmworkers Association, Inc., Transcript, p. 80; Harold Wilson, executive director of the Housing Assistance Council and chairperson of the Farmworker Housing Coalition, *Migrant and Seasonal Farmworker Housing*, p. 98.

[4] *The Hired Farm Working Force of 1979*, pp. 4–5.

[5] E. Philip McCaleb, *Migrant and Seasonal Farmworker Housing*, p. 302; *Richmond Times-Dispatch*, "No Cut Seen in Farm Jobs for Migrants," June 31, 1981, p. 1.

[6] Migrant and Seasonal Farmworkers Association, Inc., Final Statistical Report, October 1, 1980—September 30, 1981, and *The Charleston Gazette* (West Virginia), "Employment Woes Risk Apple Crop, Growers Say," June 30, 1983, p. B-2.

[7] Kevin Boyd, Transcript, pp. 70–71.

[8] Migrant and Seasonal Farmworkers Association, Inc., Richmond, Virginia, unpublished data for October 1, 1980—September 30, 1981 (hereinafter cited as *MSFA Data*).

[9] *Hired Farm Working Force of 1979*, p. 13. See also: E. P. Vecchio and Oscar Cerda, staff of the National Association of Farmworker Organizations, "Discrimination Against Farmworkers in the Insurance Industry," U.S. Commission on Civil Rights, *Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance*, April 1978, Vol. I, p. 519. According to this source, about 90 percent of the migrant and seasonal farmworker population in the U.S. is Hispanic and most of the remainder is black.

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percent black, 11 percent Hispanic, and 11 percent white.[10] Haitians represent about 10 percent of black migrant workers on Virginia's Eastern Shore, with the remainder of blacks coming mainly from Florida.[11] Jamaicans are mostly recruited for the valley area.[12]

The majority of migrant workers on Virginia's Eastern Shore are black single males, between the ages of 22 and 44, who experience high rates of unemployment and have a rudimentary education.[13] About 4 percent are either physically or mentally handicapped, about 5 percent are ex-offenders, some are specially-disabled veterans, and many are either heavy drinkers or alcoholics.[14]

Nationally, farmworkers who are Hispanic or black and other nonwhites are more dependent upon farmwork than are whites.[15] In 1979, three-quarters of all Hispanic, black, and other nonwhite farmworkers cited hired farmwork as their only employment during the year, compared to only half of white farmworkers.[16]

In general, minority farmworkers in 1979 were older than whites.[17] White farmworkers had a median age of 22.1 years, compared with 29.9 years for Hispanics and 31.1 years for blacks and others. The majority of whites were between the ages of 14 and 24, many of whom were students and homemakers who used farmwork during the summer to supplement family income.[18] The majority of Hispanics and blacks and others were 25 years and over.[19] According to the U.S. Department of Agriculture:

> These data suggest that as white farmworkers become older, they tend to move out of farmwork into other types of activities. For many whites, farmwork is only an entry-level job into the labor force or a supplemental source of earnings. Minority workers, however, are more heavily concentrated in the older age categories, suggesting, perhaps, more limited access to other types of employment.[20]

Shortage of Farmworkers

Although agriculture and its related industries are vital to the economic life of Virginia, concentration of economic activity has shifted from farms to towns and cities since World War II.[21] The shift in population away from farm areas has produced a serious shortage of skilled farmworkers, particularly where agricultural production is dependent upon hand-harvesting of crops.[22]

Migrant and seasonal farmworkers are needed in three principal areas in Virginia to help plant and harvest crops: the southwest, with abundant crops of apples, peaches, and cabbage; the Shenandoah Valley, noted for its large crops of apples, peaches, and tobacco; and the Eastern Shore, where vegetables such as tomatoes, potatoes, asparagus, and snap beans are produced.[23]

Eastern Shore of Virginia

Two Virginia counties, Accomack and Northampton, constitute what is commonly called the Eastern Shore of Virginia. It is the Virginia portion of the Delmarva peninsula, which also includes parts of Delaware and Maryland.

The Eastern Shore of Virginia is a water-laced, isolated, and sparsely-populated region[24] about 70 miles long and 8 miles wide.[25] The Chesapeake Bay is on its west side and the Atlantic Ocean on the east side. Accomack County is adjacent to Maryland. The Chesapeake Bay Bridge Tunnel, which extends 17.6 miles over and under water between the southern tip of the Eastern Shore and Hampton Roads, Virginia, is the only connection between the two land areas of Virginia.[26] The toll across the Chesapeake Bay Bridge Tunnel was $9.50 each way in 1982. Thus, the Eastern Shore has little interac-

[10] Kevin Boyd, Transcript, p. 70.
[11] *MSFA Data;* Jennifer Ruducha, Transcript, p. 149.
[12] *The Charleston Gazette,* "Employment Woes Risk Apple Crop, Growers Say," June 30, 1983, p. B-2.
[13] *MSFA Data.*
[14] Ibid.
[15] *Hired Farm Working Force of 1979,* p. 9.
[16] Ibid., p. 9.
[17] Ibid., p. 7.
[18] Ibid., pp. 5–7.
[19] Ibid., p. 7.
[20] Ibid., p. 8.
[21] State of Virginia, Virginia Employment Commission, *Labor Market Information for Affirmative Action Programs,* November 1978, p. 409.
[22] Unpublished data furnished by C. N. Lester, associate dean, Virginia Cooperative Extension Service, Virginia Polytechnic Institute, Blacksburg, Virginia, to the Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, on August 30, 1982 (hereinafter cited as *Virginia Cooperative Extension Service).*
[23] State of Virginia, *Fiscal Year 1983 Virginia Migrant Education Program Application* (February 11, 1982), map showing migrant worker areas and crops.
[24] *Virginia Cooperative Extension Service,* Accomack County Situation Statement, p. 3, and Northampton County Situation Statement, p. 4.
[25] Ibid.
[26] *Virginia Cooperative Extension Service,* Northampton County Situation Statement, p. 4.

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tion with the Norfolk metropolitan area or other large economic centers for employment or for cultural and social enrichment.[27]

Accomack County. About 25 percent of the 31,268 county residents live in 14 incorporated towns, which range in size from about 240 to 1,600 persons. The county also has 14 unincorporated towns, numerous small residential communities scattered throughout the county, and about 450 farms. An estimated 32 percent of its land is farmland, 2 percent is in clustered residential communities, 1 percent in commercial and industrial use, 20 percent in forests and open space, and about 45 percent in public lands, conservation areas, and water.[28]

Northampton County. The county has a population of about 14,625 persons. Almost the entire land area is devoted to farming, with 237 farms. About 45 percent of the farmland is used for the production of vegetables and nursery crops and the other 55 percent for the production of soybeans and grains.[29]

Two poultry processing plants, Holly Farms and Perdue, have heavily tapped the unskilled labor force.[30] The industry has given full-time employment to about 1,800 residents that might be otherwise available to agriculture, seasonal food processing plants, households, and the trade industries. Increased employment opportunities provided by the processing plants have helped to stem the flow of workers into Maryland, but for every worker coming into Accomack County, for example, about 10 commute into Maryland for work.[31]

About 800 persons in Accomack are employed in travel and tourist-related jobs that are seasonal in nature; 700 in seafood and related industries, 275 in vegetable processing, 95 in lumber; and 250 in garment firms. Others are employed in small service industries.[32]

Although mechanization has replaced the need for many farmworkers, mechanization has not taken over all aspects of harvesting. Some crops must still be hand-harvested. As a migrant worker told the Virginia Advisory Committee:

> . . .the farmer. He can plant it, but he can't harvest it. And machinery is vastly taking over but it hasn't reached the point yet where they can disregard the migrant workers; they still need them.[33]

Virginia's Farmworker Commission

In 1978 the Virginia General Assembly created the Migrant and Seasonal Farmworkers Commission. Among its statutory duties is that of providing for the coordination and evaluation of State and Federal services and, to the degree feasible, other governmental, public and private agency services to migrant and seasonal farmworkers within the State.[34] The commission has 15 members appointed by the Governor to represent growers; migrant and seasonal farmworkers and crewleaders (if practical); government, public, and private agencies; and interest groups or citizens concerned with migrant and seasonal farmworkers.[35]

With regard to setting policies that relate to the recruitment and employment of migrant and seasonal farmworkers, the commission has developed a model contract that may be used by growers and crewleaders.[36] Kevin Boyd, executive director of the Migrant and Seasonal Farmworkers Association, Inc., a nonprofit organization, told the Virginia Advisory Committee that some representatives of MSFA asked the Migrant and Seasonal Farmworkers Commission to consider developing a model contract that could be used between the crewleader and the workers. However, the "idea was rejected."[37]

In Boyd's opinion, the Migrant and Seasonal Farmworkers Commission is more representative of the interests of growers than of migrant workers:

> I have been to many of the Commission's meetings, and in my opinion the problems they have dealt with are more geared to what the growers' problems are with farmworkers rather than what the farmworkers' problems are [with growers].[38]

Since its inception, according to Boyd, no migrant and seasonal farmworkers have been appointed,

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[27] *Virginia Cooperative Extension Service,* Northampton County Situation Statement, p. 4. (The Chesapeake Bay Bridge Tunnel opened in 1964.)

[28] *Virginia Cooperative Extension Service,* Accomack County Situation Statement, p. 3.

[29] *Virginia Cooperative Extension Service,* Northampton County Situation Statement, pp. 3–4.

[30] *Virginia Cooperative Extension Service,* Accomack County Situation Statement, p. 9.

[31] Ibid.

[32] Ibid.

[33] Spencer Cox, migrant worker, Transcript, p. 78.

[34] Va. Code §9-149 (1950).

[35] Kevin Boyd, Transcript, p. 78.

[36] Ibid.

[37] Ibid.

[38] Ibid.

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although his organization and others have submitted names to various governors for consideration.[39] Boyd told the Virginia Advisory Committee that he believed the lack of representation of migrant and seasonal farmworkers on the commission reduced its effectiveness and limited opportunities to resolve problems of farmworkers, particularly those related to the terms and conditions of their employment:

> It seems to me a futile effort for farmworkers to expect to get any sort of resolution to their problems out of a commission where they have no representation.[40]

In 1982, Governor Charles S. Robb reappointed Elizabeth Rice, a former migrant worker and current crewleader, to the Migrant and Seasonal Farmworkers Commission. She was originally appointed by Governor John N. Dalton.[41] Rice told the Virginia Advisory Committee that:

> . . .the Governor appointed me to represent all the migrants on the Eastern Shore. . .[42] my home is on the Eastern Shore, but I go to Florida to work in the winter, and I didn't have the funds to come from Florida up here even though they would reimburse me to do that, but I didn't have it from the beginning. So I would get all my brochures that they sent me and I would read them. But whenever I am here [on the Eastern Shore] I go to the meetings in Richmond.[43]

The argument can be made that the migratory nature of migrant workers does not make it "practical"[44] to appoint them, but it is perhaps no less practical to appoint and reappoint a crewleader who is also migratory to represent them.

In addition, no migrant farmworker advocacy groups are represented on the commission,[45] nor are any private agencies that serve migrant workers.[46]

[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid., p. 92.
[43] Ibid., pp. 95–96.
[44] Ibid., pp. 95–96.
[45] Ibid.
[46] Membership list obtained by Virginia Advisory Committee from the Secretary of the Commonwealth, September 1982.

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Chapter 2

Recruitment and Employment

Migrant farmworkers are recruited through farm labor contractors or, sometimes, through the Virginia Employment Commission (VEC). Occasionally migrants find jobs directly; usually such migrants have worked on Virginia's Eastern Shore long enough to know growers who will employ them.

In 1982, the major Federal law regulating recruitment of migrant workers was the Farm Labor Contractor Registration Act (FLCRA),[1] sometimes referred to as the Crew Leader Registration Act. FLCRA was initially passed in 1963 to eliminate the exploitation of migrant farmworkers and of growers by labor contractors. In 1974, the law was amended to strengthen its enforcement mechanisms and increase its coverage.

FLCRA was replaced in April 1983 by the Migrant and Seasonal Agricultural Worker Protection Act.[2] FLCRA and MSPA are quite similar; the pertinent differences are noted in the text below. There is no State law in Virginia requiring crewleader registration, as there is in some other States, but "pursuant to a State agreement that was initially approved under FLCRA, the VEC is authorized to issue certificates of registration. VEC has expressed its intention to continue this service by agreeing to submit a State plan under Section 513 of MSPA."[3]

MSPA requires that all farm labor contractors obtain registration certificates from the U.S. Secretary of Labor[4] and that no grower employ a contractor without such a certificate.[5] The act also requires contractors to disclose wages and conditions of employment (described below) to migrants at the time of recruitment and to keep accurate payroll records.[6] Violations of the act are punishable by a $1,000 fine or up to one year in prison, or both.[7] Civil penalties include a fine of $1,000 per violation.[8] In addition, violations of the act by a contractor without a valid certificate are punishable by a $10,000 fine or imprisonment for up to 3 years, or both.[9]

In addition to crewleader registration, MSPA also requires registration of employees of crewleaders who deal with or transport farmworkers. These employees are issued farm labor contractor employee identification cards.[10]

Certificates of registration and farm labor contractor employee identification cards may be revoked, suspended, not issued, or not renewed if the person applying for them has knowingly made any misrepresentation in order to obtain the registration or card

[1] 7 U.S.C.A. §§2041-2053 (1973).
[2] 29 U.S.C.A. §§1801-1872 (1975 and 1983 Supplement).
[3] Charles M. Angell, Regional Administrator, Employment Standards Administration, U.S. Department of Labor, letter to Edward Rutledge, Director, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, August 17, 1983.
[4] Id. at §1811(a).
[5] Id. at §1842.
[6] Id. at §1821.
[7] Id. at §1851(a).
[8] Id. at §1853(a).
[9] Id. at §1851(b).
[10] Id. at §1811(b).

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or has failed to comply with the act and its regulations, among other restrictions.[11] Farm labor contractors may not knowingly recruit, employ, or utilize the services of any alien not lawfully admitted for permanent residence or who has not been authorized by the U.S. Attorney General to accept employment.[12] A crewleader may not have been convicted of any crime under State or Federal law relating to gambling or to alcoholic beverages in connection with or incident to his or her activities as a farm labor contractor.[13]

In addition, crewleaders may not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant worker who has filed a complaint with just cause or caused a complaint to be filed.[14]

In the summer of 1982, VEC issued 83 certificates of registration to crewleaders. Of these, 55 were issued to crewleaders on the Eastern Shore. VEC also issued 44 farm labor contractor identification cards, of which 28 were issued to employees of crewleaders on the Eastern Shore.[15]

In addition, VEC was busy throughout the summer amending certificates and cards of crewleaders. After either a certificate or card is issued, it must be renewed annually.[16]

According to Kenneth Annis, assistant rural services supervisor, VEC:

> Almost every crewleader that came to Virginia this year, we had to amend their cards. Due to cutbacks in Florida, people [in the State employment agency] didn't have the time to register them properly. They purchased insurance; they should have been authorized to transport, but due to some technicality they failed to get the right cards.[17]

At the time of recruitment, crewleaders must ascertain and disclose in writing to each worker:

(1) the place of employment;

(2) the wage rates to be paid;

(3) the crops and kinds of activities on which the worker may be employed;

(4) the period of employment;

(5) the transportation, housing, and any other employee benefit to be provided, if any, and any costs to be charged for each of them;

(6) the existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(7) the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers.[18]

A poster supplied by the DOL regarding MSPA rights must be posted in a conspicuous place at the place of employment, along with the terms and conditions, if any, of occupancy for the housing supplied.[19] A crewleader may not require any migrant worker to purchase any goods solely from him or her or any other person.[20]

Each farm labor contractor or other agricultural employer must keep and preserve for 3 years for each worker records that show:

(a) the basis on which wages are paid;

(b) the number of piecework units earned, if paid on a piecework basis;

(c) the number of hours worked;

(d) the total pay period earnings;

(e) the specific sums withheld and the purpose of each sum withheld; and

(f) the net pay. . . .[21]

This information must also be provided to each worker for each pay period.[22]

Wagner-Peyser Act

The Wagner-Peyser Act, enacted in 1933, establishes a cooperative system of public employment offices run by the States with Federal money and overseen by the U.S. Department of Labor's U.S. Employment Service.[23] In Virginia, the employ-

[11] Id. at §1813(a).
[12] Id. at §1816(a).
[13] Id. at §1813(a)(5).
[14] Id. at §1855(a).
[15] Kenneth Annis, assistant rural services supervisor, Virginia Employment Commission, telephone interview, September 29, 1982.
[16] 29 U.S.C.A. §1814(b)(1) (1975 and 1983 Supplement).
[17] Transcript, p. 157.
[18] 29 U.S.C.A. §1821(a).
[19] Id. at §1821(b).
[20] Id. at §1822(b).
[21] Id. at §1821(d).
[22] Id.
[23] 29 U.S.C.A. §§49–49 L–1 (1973 and 1983 Supplement).

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ment service is run by VEC. VEC provides free job referral services to employers and workers.[24]

At the request of the growers, VEC can recruit migrant workers within Virginia, in other States, or in U.S. territories. Employers must assure compliance with the regulations of DOL's Employment and Training Administration (ETA) regardless of where the workers are recruited.[25]

ETA regulations issued pursuant to the Wagner-Peyser Act for the recruitment of temporary foreign agricultural workers are similar to those of MSPA but require more assurances of employers. These regulations provide that employers must agree to supply housing for the workers,[26] pay for insurance coverage for any injury and sickness not covered by State workers compensation laws,[27] and guarantee that each worker will be provided work for at least three-fourths of the specified work days in the contract.[28]

If VEC cannot find migrant workers in Virginia, it is authorized by provisions of the Wagner-Peyser Act and regulations of ETA to recruit migrant workers in other States or U.S. territories.[29] If an insufficient number of migrant workers are found in the domestic labor force, employers may recruit workers in foreign countries under the H-2 program run by the Immigration and Naturalization Service.[30]

The H-2 program provides for the admission of nonimmigrant aliens into the United States to accept temporary employment "if unemployed persons capable of performing such service or labor cannot be found in this country."[31] Their admission must not "adversely affect the wages or working conditions of similarly employed U.S. workers,"[32] and persons admitted must have "no intention of abandoning" their country.[33]

In 1973, in the case of *NAACP* v. *Brennan*,[34] the U.S. Supreme Court found that the DOL had failed to adhere to its own regulations in 13 areas. The violations concerned pay and working conditions and discrimination based on race, sex, national origin, and age.

As a result of the *Brennan* case, DOL developed regulations that are well-designed to protect migrant workers and to ensure nondiscriminatory practices by State employment agencies. The regulations provide for both a regional monitor-advocate system and a State monitor-advocate system to oversee enforcement.[35] State monitor-advocates are to collect information from any source available in the State, including reports made by outreach workers in the State public employment agency, in order to assure compliance.[36] The regional monitor-advocate oversees the activities of State monitor-advocates.[37] Both the regional[38] and the State monitor-advocates[39] may make onsite visits to migrant camps to obtain information about the living and working conditions of migrant workers.

The DOL regional monitor-advocate for Virginia is located in Philadelphia. The State monitor-advocate is an employee of VEC in Richmond. The State monitor-advocate in Virginia has additional responsibilities as a VEC employee, including handling job service complaints, certification, liaison with the Migrant and Seasonal Farmworkers Commission, and problems that may cause delays in programs such as the Comprehensive Employment Training Administration (CETA) program.[40]

However, apparently growers on Virginia's Eastern Shore no longer use VEC to obtain migrant workers. According to Philip McCaleb, chairman of the Virginia Migrant and Seasonal Farmworkers Commission and a grower on the Eastern Shore of Virginia, growers have problems in meeting the requirements of regulations governing job orders placed with VEC:

> We have gotten to the point where it's almost impossible for any grower on the Eastern Shore to qualify for a job order any more. . . .[41]

VEC personnel have little or no role in the recruitment of migrant workers for the Eastern

[24] Kenneth Annis, Transcript, p. 153.
[25] 20 C.F.R. §602.2 (1981).
[26] 20 C.F.R. §655.202(b)(1) (1981).
[27] Id. at §655.202(b)(2)(ii).
[28] Id. at §655.202(6)(i).
[29] 20 C.F.R. §602.8(a) (1981).
[30] 8 U.S.C. §1101(a)(15)(h)(ii) (1976).
[31] Id.
[32] Id. at §1182(a)(14)(B).
[33] Id. at §1101(a)(15)(H)(ii).
[34] *NAACP* v. *Brennan*, 360 F. Supp. 1006 (1973).
[35] 20 C.F.R. §653.108 (1981).
[36] 20 C.F.R. §653.108(n) (1981).
[37] Id. at §658.603(f)(7).
[38] Id. at §658.603(f)(5).
[39] Id. at §653.108(1).
[40] Jeffreys Hudson, State monitor-advocate, telephone interview, October 10, 1982.
[41] *Migrant and Seasonal Farmworkers Housing*, p. 302.

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Shore of Virginia and only a minor role in the other areas of Virginia where migrant workers are recruited.[43]

Kenneth Annis, VEC assistant rural services supervisor, told the Virginia Advisory Committee that VEC attempts to assure that both crewleaders and workers know the terms and conditions of employment:

> We provide assistance to crewleaders and workers. We have provided, I think, something like 3,500 copies of "Terms and Conditions of Employment" this year to crewleaders and workers. So most workers on the Shore should know basically what they are doing and how much they are supposed to get.[44]

While it is important that this type of information be made available, workers complain that crewleaders do not comply with the terms and conditions promised. At a congressional subcommittee hearing held on Virginia's Eastern Shore in September 1981, a Haitian migrant said:

> One day. . .I see the bossman coming. He say he got a job in Virginia [picking tomatoes]. So I said OK. I came with him. . .I says, how much [are you going] to pay a basket? He says 50 cents for a basket. OK. I come and start one day, go to work in the field with him. He says he pay 25 cents.[45]

Workers Compensation Insurance

Virginia has had a workers compensation law since 1919.[46] Employers covered by the law must obtain insurance from a private insurance company that will provide benefits to employees who become injured or ill while employed and are unable to work.[48] An employer may be authorized by the Industrial Commission to be an individual self-insurer.[47] The benefits cover some medical expenses and loss of income. The workers compensation law in Virginia is administered by the Industrial Commission of the Commonwealth. It is responsible for assuring that covered employers obtain required insurance and that any disputes regarding claims filed on behalf of an employee are properly handled in the event a claim is disputed.[48]

The Wagner-Peyser Act requires that growers or crewleaders who recruit migrant workers through VEC must purchase workers compensation insurance or its equivalent.[49]

State law provides that employees who are successful in establishing a claim may receive weekly no more than two-thirds the employees average weekly wage.[50] In 1982, the maximum benefit any type of worker could receive in Virginia was $253 weekly. MSPA, on the other hand, does not require that employers of migrant workers obtain workers compensation insurance.

Social Security

Unless there is a written agreement to the contrary between a grower and a crewleader, the crewleader is considered the employer by the Social Security Administration (SSA).[51] Otherwise the crewleader does not have authority to deduct proper amounts from the earnings of a migrant for social security, workers compensation, and taxes. The crewleader is required to keep and file all necessary reports to Federal and State agencies.

If a migrant worker earns $150 from one crewleader or works 20 days in a year and makes the necessary social security contributions, the migrant has met the minimal requirements for eligibility for benefits under the Social Security Act.[52] This law provides monetary benefits when an eligible worker becomes disabled, retires, needs medicare, or dies.

However, to be eligible for social security benefits, a migrant worker must have applied to SSA for a social security number and made contributions to social security. The crewleader who avoids payment of items like social security has a competitive advantage over crewleaders who do not. When seeking a contract with a grower, the crewleader who requires the least amount of money to cover the

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[43] Ibid.
[44] Transcript, p. 154.
[45] *Migrant and Seasonal Farmworker Housing*, p. 290.
[46] *Feitig* v. *Chalkley*, 38 S.E.2nd 73, 74 (1946).
[47] Va. Code §65.1-104.1 (1950).
[48] Ibid.
[49] Va. Code §65.1-92 (1950).
[50] 20 C.F.R. §655.202(2)(ii).
[51] Va. Code §65.1-54 (1950). It should be noted that while compensation for total incapacity may not exceed 66 2/3 percent of the injured worker's salary, this payment is subject to a minimum of not less than 25 percent and a maximum of not more than 100 percent of the average weekly salary of the Commonwealth.
[52] 26 U.S.C.A. §3306(o)(1) (1979).
[53] U.S. Department of the Treasury, "Social Security Information for Crewleaders and Farmers," March 1975, p. 2.

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payroll is the one most likely to get the contract when competing with other crewleaders.[53]

One observer has complained that some crewleaders employ migrants who do not have social security cards and deduct social security and taxes anyway:

> The crewleaders pay the social security taxes, or the crewleader—he deducts it from their pay and sometimes on top of that, rent money. He deducts it from their paychecks, and, well, sometimes they [the workers] don't even—some of them don't even have a number—they only have a receipt showing they applied for a social security number, and they still pay taxes.[54]

Unemployment Benefits

Migrant workers are frequently unemployed not only in the winter but for intermittent periods during the summer when, for example, they are traveling from one State to another or when they are unable to work because of weather conditions.

Pursuant to the Federal Unemployment Tax Act,[55] crewleaders, as employers, are required to pay a tax based on the wages paid to migrant workers.[56] These taxes are then allocated to approved State agencies that administer State unemployment laws. Eligibility for unemployment compensation as well as the amount of benefits varies from State to State.

An arrangement has been made and approved by the Secretary of Labor, under provisions of the Federal Unemployment Tax Act,[57] whereby an unemployed worker who has worked in two or more States, such as may occur with migrant workers, may file for a combined-wage unemployment claim. Such combined claims are processed in Virginia by VEC.

Margaret Vass, manager of VEC's Exmore office, told the Virginia Advisory Committee that it is sometimes difficult for migrant workers to obtain unemployment payments. Each State has its own unemployment compensation laws and eligibility requirements, which makes it cumbersome to determine unemployment benefits for migrant workers that travel from State to State. She said:

> If you work in Virginia, only in Virginia, you may not be eligible. You may go to another State, earn that same amount of money and be eligible.[58]

Prior to being a VEC manager, Vass was an unemployment claims deputy at VEC. In that capacity she was able to help migrant workers obtain unemployment payments even when the workers did not have the full name of the growers or crewleaders that had employed them. Often a migrant worker would know a crewleader only by a first name or nickname. In those cases, she could sometimes obtain the full name by talking with someone in the farm placement section of VEC who could identify the crewleader.[59]

Vass also had success in helping migrants who had been improperly denied benefits in other States. As an illustration, she told the Virginia Advisory Committee that a crew from Eagle Pass, Texas, had been told when they returned to Eagle Pass from Virginia that they did not have a valid claim for unemployment. Vass, however, found out that the workers had credit with an employer in Eagle Pass and with two crewleaders in Virginia. She filed a combined-wages claim that resulted in most of the workers in the crew each receiving between $1,500 and $1,700 in benefits. Vass was uncertain about what had happened in Eagle Pass, but she thought the State employment office there should have carried out the same procedure.[60]

While migrant workers may eventually get unemployment payments, there often is a long waiting period, sometimes as long as 9 or more months, according to Kenneth Annis of VEC.[61]

Crewleaders do not always pay unemployment taxes in a timely fashion. Annis indicated that a crewleader had paid over $3,000 in back taxes the week during which the Virginia Advisory Committee was on the Eastern Shore for its forum.[62]

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA)[63] regulates wages, overtime pay, and child labor. It is enforced by the Wage and Hour Division of the U.S. Department of Labor.

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[53] George E. Carr, Legal Aid Bureau, *Migrant and Seasonal Farmworker Housing*, p. 185.
[54] Ibid., p. 294.
[55] 26 U.S.C.A. §§3301–3311 (1979).
[56] Id. at §3301.
[57] 20 C.F.R. §616 (1981).
[58] Transcript, pp. 164–165.
[59] Ibid.
[60] Ibid., pp. 162–164.
[61] Ibid., p. 155.
[62] Ibid.
[63] 29 U.S.C.A. §§201–219 (1978).

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Pursuant to provisions of the act, "every employer shall pay to each of his employees who in any workweek is engaged in. . .the production of goods for commerce. . .not less than $3.35 an hour. . . ."[64] If a migrant worker does not make the equivalent of $3.35 per hour doing piecework, then the employer must make up the difference between the amount the migrant worker earned and the minimum wage required.

In fiscal year 1982, the Wage and Hour Division conducted 26 investigations under the Fair Labor Standards Act on Virgiia's Eastern Shore. As a result, $1,832 was found due to 31 employees.[65]

FLSA requires that workers receive premium pay for work in excess of 40 hours per week, but farmworkers are exempt from this requirement and are not paid overtime rates.[66] In addition, migrant workers are not paid for the time they spend traveling to and from the fields, for the time they wait for trucks or equipment, for bad weather days that prevent them from working, for days when they are too ill to work, and so forth.[67]

The Fair Labor Standards Act regulates the employment of children under the age of 16 years as follows:

1) Youths aged 16 and above may work in any farm job at any time.

2) Youths aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor.

3) Youths aged 12 and 13 may work in jobs not declared hazardous outside school hours either with written parental consent or on the same farm where their parents are employed.[68]

The Wage and Hour Division office in Baltimore enforces the Fair Labor Standards Act on the Eastern Shore of Virginia. According to Annis, approximately eight inspectors were active on Virginia's Eastern Shore during the summer of 1982.[69]

Some crewleaders are being assessed fines for noncompliance:

In Virginia, a few years ago, it was costing workers and crewleaders over $100,000 in assessments and most of those assessments were made in these two counties.[70]

Annis told the Virginia Advisory Committee that he included workers in his statement about the amount of assessments paid because:

The people [migrants] we are talking about protecting are the people that are paying it [the assessment]. Anything you take from them [crewleaders], it comes from the worker, and eventually you are going to pay for it when you buy the pound of potatoes or tomatoes or whatever. . . .[71]

Philip McCaleb, chairman, Migrant and Seasonal Farmworkers Commission, told the Virginia Advisory Committee:

Virginia has been subjected the past couple of years to an intensive enforcement effort by Wage and Hour. It is illustrated by the fact that I believe Virginia is 9th, 10th, maybe as low as 12th, as far as the number of migrants in utilization in the country and they are 6th in the level of enforcement. Of course, it is curious also that the percentage or the number of citations. . .that [have been] found in Virginia is one of the lowest in the country on a percentage basis in spite of an intensive effort to inspect on a Federal level for Wage and Hour.[72]

According to testimony given at the congressional hearing on Virginia's Eastern Shore in September 1981:

Most of the. . .Haitian farmworkers. . .really do not understand the. . .meaning of piecework associated with minimum wage. . .so. . .it's really a source of being exploited by the crewleaders, in the sense that he [the worker] can go out there, spend a whole day on the field, and pick only for $15 or $17, while he is entitled to a full day of work.

But for him, he is satisfied, because he thinks that is what the crewleader owes him, in the sense that's all right, that's what I make. He is satisfied, but he doesn't know that the crewleader has the responsibility to guarantee the worker the full-time work before he even gets him on the bus from Florida to bring him up here. . . .

There is another thing about that too, it is the fact they don't get pay receipts. Most crewleaders don't give pay

[64] Id. at §206(a)(1).
[65] Angell Letter.
[66] 29 U.S.C.A. §207(a)(1) and §213(a)(b) (1965); also Angell Letter.
[67] Monica Heppel, sociologist and former migrant worker, interview in Accomack, Virginia, August 2, 1982 (hereinafter cited as Heppel Interview).
[68] Angell Letter.
[69] Kenneth Annis, Transcript, p. 156.
[70] Ibid., p. 156.
[71] Ibid., p. 157.
[72] Ibid., p. 54.

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receipts, which would indicate the number of bushels and the number of hours they work for, and they give that.[73]

Title VII of the Civil Rights Act of 1964

Several participants in the open meeting held by the Virginia Advisory Committee observed:

> . . .if they are a Mexican crewleader, they are going to recruit Mexican people, and if they are a black crewleader, they have black people working for them. . . .[74]

The U.S. Equal Employment Opportunity Commission (EEOC) enforces most of the Federal laws prohibiting discrimination in employment. Title VII of the 1964 Civil Rights Act covers employers who hire 15 or more employees at least 20 weeks a year. Although Title VII is one of the strongest Federal laws in the area of recruitment and other terms and conditions of employment, it probably applies to few crewleaders as employers, since most of them do not employ migrant workers as long as 20 weeks a year.[75] Virginia has no general law prohibiting employment discrimination.[76]

[73] Jean Yves Point du Jour, Maryland Legal Aid Bureau, *Migrant and Seasonal Farmworker Housing*, p. 293.
[74] Jennifer Ruducha, Transcript, p. 151.
[75] *Hired Farm Working Force of 1979*, pp. 12, 20.
[76] U.S. Commission on Civil Rights, *Sex Discrimination and Title VII in Virginia* (Washington, D.C., April 1981), p. 1.

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Chapter 3

Housing

. . .despite the enactment of laws intended to produce adequate housing for farmworkers, very little has in reality been accomplished.[1]

A critical shortage of rental housing exists on Virginia's Eastern Shore year-round.[2] Of the nearly 20,000 housing units in 1980,[3] the majority were either single-family or mobile homes, occupied throughout the year by local residents.[4]

Over the past few decades, little construction of housing units has occurred; nearly two-thirds of the occupied housing was built prior to 1940. Half of all year-round rental units in the area are substandard, with outdated heating systems, lack of insulation, and inadequate plumbing and sewage disposal facilities.[5]

Between mid-June and mid-August, 4,000 or more migrant adults and children come to Virginia's Eastern Shore.[6] All of them need decent temporary housing.

Not infrequently, migrants have no housing at all and must live out of their cars for days and even weeks at a time.[7]

Because most migrant workers lack transportation[8] and because temporary housing near the worksite is limited, most migrant workers are housed on farms in migrant camps. A migrant camp is literally anything that provides living quarters for more than 10 persons, one or more of whom is a migrant worker.[9] A camp may consist of one or more structures—buildings, tents, barracks, mobile homes, vehicles, converted buildings, or other unconventional enclosures—that protects workers from the elements.[10] Housing ranges from converted chicken houses and barns to good block construction.[11]

Number of Migrant Camps

Available figures on the number of migrant camps on Virginia's Eastern Shore are unreliable. The Migrant and Seasonal Farmworkers Association has identified 43 camps with a capacity of 1,462 persons.[12] Of these camps, 27 are in Accomack County[13] and 16 in Northampton County.[14] The majority of the camps will accommodate between 11 and 40 people.[15] Of the 27 camps in Accomack, one will accommodate 100 persons and another will hold 120 occupants. Of the 16 camps in Northampton, two camps have a maximum capacity of 60 people

[1] Representative Henry B. Gonzalez, *Migrant and Seasonal Farmworkers Housing*, p. 2.
[2] *Virginia Cooperative Extension Service*, p. 7.
[3] U.S. Bureau of the Census, *Summary of Social and Economic Characteristics*, Table 4, 1980.
[4] *Virginia Cooperative Extension Service*, p. 7.
[5] Ibid.
[6] Kenneth Annis, Transcript, p. 159.
[7] *A Guide for Serving Farmworkers in the State of Virginia* (Richmond: Migrant and Seasonal Farmworkers Association, 1982) (hereinafter cited as *Guide to Serving Farmworkers.)*
[8] Kevin Boyd, Transcript, p. 74.
[9] Va. Code §32.1-203(2) (1950).
[10] Id.
[11] Kevin Boyd, Transcript, p. 74.
[12] Ibid., pp. 18–22.
[13] Ibid.
[14] Ibid., pp. 20–22.
[15] Ibid., pp. 18–22.

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each, one will accommodate 50 people, and one will house 90 occupants.[16]

Since an estimated 4,000 migrants needed housing during the 1982 season on Virginia's Eastern Shore,[17] the 43 camps with a maximum capacity of 1,462 could not legally accommodate even half the migrants unless the turnover was enormous.

According to the Migrant and Seasonal Farmworkers Association, the 43 camps were identified with the assistance of Virginia's Eastern Shore Health District.[18] This agency is responsible under State law for issuing permits to operate migrant camps and for inspections (as described below). The MSFA believes that the 43 camps are "only the tip of the iceberg"[19] and that "many migrants live in camps or houses which have not been inspected by the appropriate State and Federal agencies."[20]

Monica Heppel, a sociologist and former migrant worker, told the Virginia Advisory Committee:

> . . .I would come in [to a community agency] and mention [a camp] to someone at legal aid or someone at migrant health, and they didn't even know that there was a crew working. . .and living there. Therefore, there was no way they could have been inspected. And there is a fair amount of that going on.[21]

Jennifer Ruducha, nurse coordinator for the Delmarva Health Project, reported that outreach workers:

> . . .have haphazardly come across migrants [living in private housing in the communities]. Many times it is hard for us to identify who migrants really are. . . .I think there needs to be a structure, a physical place where migrants can be housed so they can be better traced and better. . .taken care of, versus the local housing which isn't regulated. It is very hard to find.[22]

Camp Conditions

The Migrant and Seasonal Farmworkers Association, Inc., which offers a housing referral service for migrant and seasonal farmworkers on Virginia's Eastern Shore and elsewhere in the State, reports that it has contact with about 30 percent of migrant workers.[23] MSFA has found that 67 percent of those migrant workers are living in migrant camps, 18 percent have no shelter at all, about 11 percent rent housing in the surrounding communities, and the remaining 4 percent find housing under other circumstances. The exact figures for all migrants on the Eastern Shore are not available, but it is believed that most migrant workers are housed on the farms.[24]

A migrant worker on Virginia's Eastern Shore told members of the Virginia Advisory Committee:

> I know people who have pets [that] live better than the migrant workers are living. . . .[25]

> I haven't seen one [migrant labor camp] that I would consider fit for human beings to live in. . .and I've been to every one in Virginia just about. I've been here for 40 years. . . .They've got houses in them woods you wouldn't believe. No one lives in them until the migrant workers come in and call them a camp.[26]

Another migrant told a congressional committee:

> [At the camp] the housing was real poor, real old, nothing but wood. The inside has cardboard all up on the top and on the sides. Then you may have a little—what they put on the roof, tar paper, over that, and that was it. And it had a lot of cold wind coming in. And the beds and the mattress—they was old. The mattresses looked like they had been there 2 or 3 years, like you are using the same mattress over and over again.
>
> When the tomatoes went down, I left there, and I met the Haitians that bring me to Juan's camp. When I got there, just about the same condition—mattress, holes in the wall, holes in the door. The faucet—you have to lean over a big puddle of water to drink it, and if you are not strong to hold to the pipe while you are unscrewing it, you know, to get the water, you fall. It's all real muddy and everything.[27]

When converted chicken houses, horse barns, and similar structures are used,[28] typically they are partitioned inside to provide some privacy for the occupants. Some of these migrant camps have only one door and a hallway running from one end to the other with the partitioned areas on either side.[29] Lack of adequate insulation and air conditioning makes the living space very hot in the summer, and

[16] Ibid., pp. 20–22.
[17] Kenneth Annis, Transcript, p. 159.
[18] *Guide to Serving Farmworkers*, p. 17.
[19] Ibid.
[20] Ibid.
[21] Transcript, p. 104.
[22] Transcript, p. 143.
[23] *MSFA Data.*
[24] Ibid.
[25] Spencer Cox, Transcript, p. 66.
[26] Ibid., p. 90.
[27] James Lee William, migrant, *Migrant and Seasonal Farmworker Housing*, p. 295.
[28] Spencer Cox, Transcript, p. 63, and Kevin Boyd, Ibid., p. 4.
[29] Jennifer Ruducha, Transcript, p. 144.

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the partitions inhibit a free flow of air for ventilation.[30] Mattresses are sometimes wall to wall on the floor.[31] The mattresses are removed during the day so the occupants can walk around.

Abandoned farm houses, single-room wood cabins, and concrete houses are other types of migrant camps. It is not unusual to find holes in the walls or roofs, rotten ceilings, and visible electrical wiring.[32]

Virginia's Eastern Shore residents rely primarily on septic tanks and privies to remove waste. Neither means of waste and sewage removal is suited to use by large numbers of people. Both depend upon a process of chemical decomposition and drain fields large enough to absorb the waste liquids. Septic tanks generally become full and overflow early in the season due to overuse of the facilities.[33] The same situation is true for privies; that is, overcrowded conditions in the camps leads to an overflow of waste. As a consequence, some migrants use receptacles to collect their waste and discard it in the fields surrounding the camp; some use the fields in the first place.[34]

This potential spread of disease by insects and other means of contact with surface waste matter is a problem, as is potential contamination of the water supply where the water table is near the surface.

Drainage problems also exist in many of the migrant camps when laundry water is discarded or when water from shower rooms runs out onto the ground.[35] Heavy rains often produce pools of water that may stay long enough for insects to breed and transmit disease.[36]

An outreach worker for the Migrant and Seasonal Farmworkers Association pointed out that when camps on Virginia's Eastern Shore are compared with one another, some are considered better than others and may be called good camps within that context. However, when good camps on Virginia's Eastern Shore are compared with good camps in other parts of Virginia or the Nation, they are generally described as deplorable.

> I have seen some camps that were good by camp standards, but that's by camp standards [on the Eastern Shore of Virginia]. If you've ever seen a camp here on the Eastern Shore [of Virginia], you'd know good is not very good. And I've seen some really rotten living quarters.[37]

Kevin Boyd of the Migrant and Seasonal Farmworkers Association supported this observation:

> Housing. . .is a big problem on the Eastern Shore [of Virginia]. I've heard people who have traveled around the country, have been in migrant camps all over the country, describe those conditions on the Eastern Shore as some of the worst they have ever seen.[38]

Kenneth Annis, assistant rural services supervisor, Virginia Employment Commission, touched on the question of why migrant workers continue coming to Virginia's Eastern Shore in view of its reputation for having unfavorable housing conditions in the camps:

> We hear that everything is so bad here [on Virginia's Eastern Shore]. And a lot is bad. But have any of us wondered why these people [migrants] come back here year in, year out, when there is good housing in Pennsylvania, when there is good housing in Winchester [Virginia], when there is good housing in southwest Virginia. . .? Not everything is right; but there are jobs here and they come here because there is work.[39]

State Laws and Regulations

Virginia requires that the State Commissioner of Health be given 30 days written notice by any person who plans to construct, remodel, enlarge, or convert property for the purpose of using or occupying the property as a migrant labor camp.[40] The commissioner is responsible for forwarding to the person who gives notice a copy of Article 6, Migrant Labor Camps, Title 32.1 of the Health Laws of Virginia, and any other applicable regulations.[41]

On November 1, 1980, Virginia's Office of Health Protection and Environmental Management published rules and regulations governing the construction and maintenance of migrant labor camps. Under these rules and regulations, a permit must be issued by the State health department for each migrant camp operated in the State.[42] The regulations are

[30] Heppel Interview.
[31] Jennifer Ruducha, Transcript, p. 144.
[32] Heppel Interview.
[33] Ibid.
[34] Alex Le Brun, migrant worker, *Migrant and Seasonal Farmworker Housing*, p. 294.
[35] Monica Heppel, Transcript, p. 102.
[36] Heppel Interview.
[37] Pauline James, outreach worker, Migrant and Seasonal Farmworkers Association, Transcript, p. 167.
[38] Transcript, p. 74.
[39] Transcript, p. 159.
[40] Va. Code §32.1-204 (1950).
[41] Id.
[42] Id. at §32.1-205.

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enforced on the Eastern Shore by the Eastern Shore Health District.[43]

Thus the health department should be aware of any migrant camp under construction as well as any camp that has a permit to operate. Even working with the Migrant and Seasonal Farmworkers Association and other groups, as noted earlier, the health department has been unable to determine the exact number of migrant camps on Virginia's Eastern Shore.

Permit Requirements

Applicants for a permit to operate a migrant labor camp on Virginia's Eastern Shore are usually crewleaders. Application for a permit to operate a migrant labor camp in Virginia must be made to the Commissioner of Health at least 30 days before the migrant camp is to be occupied.[44] A separate application is needed for each camp.[45] Permits are nontransferrable and automatically expire on December 31 of each year.[46]

A migrant camp that does not meet applicable regulations at the time a permit is sought may receive a provisional permit valid for no more than 30 days, provided the operation of the camp will not create an imminent danger to the health and safety of migrant workers. The camp must meet the terms, requirements, or conditions prescribed by the commissioner until the camp is brought into compliance.[47]

The camp operator or crewleader is responsible for ensuring compliance with applicable laws and with all conditions stated in the permit itself.[48] The commissioner of health may deny, revoke, or suspend a permit for a camp when the camp is in violation of the law or applicable regulations.[49]

Federal Assurances Regarding Migrant Housing

When migrant workers are recruited through the Virginia Employment Commission under provisions of the Wagner-Peyser Act, the employer must provide rent-free or public housing that meets Federal standards.[50] Members of the migrant worker's family must also be housed.[51] Haitian workers obtained through a special arrangement between the U.S. Department of Labor and the U.S. Department of Justice, pending a decision as to their immigration status, must be provided rent-free housing.[52]

Very few migrant workers, however, are obtained by growers and crewleaders through VEC. Workers are usually obtained by crewleaders under MSPA (and formerly under FLCRA). Crewleaders and growers are not required by MSPA to provide rent-free or public housing, but a crewleader must identify the housing to be provided, and anyone who owns or controls the housing must comply with MSPA housing requirements.[53]

These housing requirements in turn refer to Federal and State standards. Generally migrant housing built or under construction prior to April 3, 1980, may conform to standards set by the Employment and Training Administration or by the Occupational Safety and Health Administration (both in the U.S. Department of Labor).[54] Migrant housing built after April 3, 1980, must conform to the OSHA regulations.[55] Migrant housing may not be occupied unless a State or local health authority or other appropriate agency (including a Federal agency) has certified that the housing meets applicable safety and health standards. A certificate to that effect must be posted prior to occupancy.[56] An exception may be made if an inspection was requested of a State or local agency at least 45 days prior to occupation but has not yet been conducted.[57]

The Wagner-Peyser Act is administered by the U.S. Department of Labor's Employment Training Administration.[58] Housing for migrants recruited through the Virginia Employment Commission pursuant to that act is inspected by VEC prior to occupancy.[59] ETA has delegated its inspection authority to VEC.[60] As noted above, very few migrant workers are recruited through VEC.

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[43] Dr. Belle De Cormis Fears, agency director, Eastern Shore Health District, Transcript, p. 135.
[44] Id. at §32.1-204.
[45] Id. at §32.1-205.
[46] Id. at §32.1-207.
[47] Id. at §32.1-208.
[48] Id. at §32.1-210.
[49] Id. at §32.1-209.
[50] 20 C.F.R. §653.501(f)(XV) (1982).
[51] Id.
[52] Id.
[53] 29 U.S.C.A. §1823(a) (1975 and 1983 Supplement).
[54] 48 Fed. Reg. 15820 (1983) (to be codified at 29 C.F.R. pt. 500) (proposed April 12, 1983).
[55] Id.
[56] 29 U.S.C.A. §1823(b)(1) (1975 and 1983 Supplement).
[57] Id. at §1823(b)(2).
[58] 20 C.F.R. §602.1(e) (1982).
[59] Id. at §653.501(d)(6).
[60] Id. at §602.11.

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The Department of Labor is responsible for administering the Migrant and Seasonal Agricultural Worker Protection Act.[61] Under this act, ESA's Wage and Hour Division inspects migrant camps to determine compliance with applicable health and safety regulations. In fiscal 1982, under the Farm Labor Contractor Act (which was replaced by MSPA in January 1983), Wage and Hour staff conducted 15 housing inspections, 6 of which disclosed violations of FLCRA's health and safety provisions. Under FLCRA, the Wage and Hour Division could only inspect housing owned or controlled by a farm labor contractor.[62]

The Occupational Safety and Health Act of 1970[63] is administered in Virginia by the Virginia Department of Labor and Industry in conjunction with the Virginia Department of Health.[64] Pursuant to an "operational status agreement" between OSHA and the State of Virginia concluded June 11, 1982, OSHA does not initiate concurrent enforcement authority with regard to any matter covered by Virginia's State plan.[65]

Virginia's health laws governing the construction and maintenance of migrant labor camps include OSHA standards in 29 C.F.R. section 1910.142 (1982) and a few additional requirements related to garbage containers, approved water supply, sewage disposal, and storage of hazardous materials.[66]

The Virginia State plan is administered by the Virginia Department of Labor and Industry, and the Virginia Department of Health is responsible for occupational health matters.[67] At the local level, the Eastern Shore Health District, including both Accomack and Northampton counties, conducts inspections of migrant camps.[68] However, the Virginia Department of Labor and Industry continues to inspect camps in response to complaints.[69] Virginia law provides for judicial review of appeals to the State agency.[70]

[61] 29 U.S.C.A. §1861 (1975 and 1983 Supplement).
[62] Angell Letter.
[63] 29 U.S.C.A. §651–678 (1976).
[64] 29 C.F.R. §1952.370(a) (1982).
[65] Id. at §1952.372.
[66] Commonwealth of Virginia, State Board of Health, Rules and Regulations Governing the Construction and Maintenance of Migrant Camps, §4.01.
[67] 29 C.F.R. §1952.370 (1982).
[68] Dr. Belle De Cormis Fears, Transcript, p. 135.
[69] 29 C.F.R. §1952.370(b) (1982).
[70] 29 C.F.R. §§1952.370–384 (1982).

State Responsibilities

Until 1982 OSHA did periodic onsite monitoring of the implementation of OSHA regulations by the Industrial Safety Division.[71] At that time Virginia became one of 26 States participating in a special study being conducted by the Federal government's Office of Management and Budget to reduce paperwork and costs.[72] Computer terminals have been installed in designated State agencies to furnish monitoring and compliance data to the Federal government. This program, whose costs are shared equally by the Federal and State governments involved, eliminates onsite monitoring by OSHA of State agencies responsible for enforcing compliance with OSHA regulations until the study is completed.[73]

The Eastern Shore Health District not only inspects migrant camps on Virginia's Eastern Shore for compliance with VOSHA/OSHA health standards[74] but also makes biweekly inspections of health conditions as required by Virginia health laws governing the construction and maintenance of migrant labor camps.[75]

Migrants may file complaints requesting inspection with the Virginia Department of Labor and Industry. The department prefers to have complaints in writing and signed, but that is not essential. Telephone complaints will also be accepted. A copy of the complaint is presented to the owner of the allegedly offending camp; the name of the complainant may be withheld upon request. Imminent danger complaints take precedence over other types of complaints. In 1981, the department had only two complaints filed.[76] Both involved complaints about electrical wiring and neither complaint was received from the Eastern Shore.[77]

Michael T. Robinson, staff attorney for the Eastern Shore Legal Aid Center, was not surprised by the lack of complaints received by the Virginia Department of Labor and Industry:

[71] Elliott A. Scruggs, director, Industrial Safety Division, Virginia Department of Labor and Industry, interview in Richmond, September 22, 1982 (hereinafter cited as Scruggs Interview).
[72] Ibid.
[73] Ibid.
[74] Commonwealth of Virginia, State Board of Health, Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps, §4.01.
[75] Ibid., §3.07.
[76] Scruggs Interview.
[77] Ibid.

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When [migrants] come and. . .make reports of violations or they request assistance from outside agencies, sometimes [they] are put into jeopardy for that very reason. . . .[78]

Dr. Belle DeCormis Fears, director of the Eastern Shore Health District, told the Virginia Advisory Committee that biweekly inspections are not adequate and that some housing in which migrants are housed cannot be inspected by her agency:

A migrant camp houses 10 or more people, one of which is a migrant. So any house, or shack, or whatever, occupied by 5, 6, 7, 8, 9 people is not, by definition, a migrant camp and we cannot regulate it. We cannot regulate any private housing. Some [migrants] do live in private housing. So there is certainly a problem, and it is even a problem in enforcing minimum standards which this State has in its rules and regs [regulations].

Naturally, an inspector can go through a camp today and all the water is hot, and by tomorrow the gas can run out and the garbage can pile up and he is not back for 2 weeks. So I would think you really have to have daily inspections to keep up sanitation and to maintain the migrant camps in topmost condition.

. . .It might be twice a day that's necessary but we are doing it every other week. . .when we were Federally funded, we did inspect every week. . . .But, of course, funds are limited and you have to set up your priorities and do the best you can with what you have.[79]

Adequacy of Inspections

Kenneth Annis of the Virginia Employment Commission stated that migrants were being protected and that inspections were producing a high level of compliance:

There are two teams of Wage and Hour [inspectors] on this Shore today contacting crewleaders and workers—investigating. The worker has some protections. It is a system out there. It has problems, but it is doing a lot better job than it used [to]. There is more compliance in these two counties than any other area [in the nation] other than Mt. Olive, North Carolina. . . .

Wage and Hour has been here since June and. . .we are talking about additional housing inspections. Wage and Hour is inspecting the housing. They are citing crewleaders. If the camp is filthy, the crewleader gets an assessment. These fines run from $100 to $1,000. People on the shore are paying a lot of money. A lot of it might be technicalities, but they are paying it. We don't agree with all the things they are writing them up for, but they're doing it. So people are being protected.[80]

Kevin Boyd of the Migrant and Seasonal Farmworkers Association disagreed:

Many migrants live in camps or houses which have not been inspected by the appropriate State and Federal agencies.[81]

A migrant worker told the Virginia Advisory Committee that:

. . .some of the camps we live on haven't been inspected or, if they have passed inspection, should have been condemned 5 years ago. There is a difference between a human being and a chicken [referring to converted chicken houses]. Mosquitos are in there; they carry diseases. Yet they're okay for people to live in. Outdoor toilets. No hot water to bathe in. You've got to take a bath and shave in cold water.

. . .They get the impression somehow migrant workers are less than human beings. . .the inspectors are not doing their jobs because you can go to any camp and see the conditions. How can they approve it under any conditions? Somebody is not showing genuine concern about the migrant workers.[82]

A sociologist and former migrant worker told the Virginia Advisory Committee that more frequent inspections were needed:

Many times camps would be all right when we moved in; there would be hot water, but the propane tanks would run out and they were never replaced. So we did have cold water to take showers for weeks at a time. . . .Perhaps a camp of 80 people [would have] two very small faucets; the showers would be one room with just a little hole cut out in the side of the wall so the water runs out and collects for mosquitos.[83]

The State has been, I think, somewhat successful in the health inspection area [since then]. Offhand, that's about all I really know where they have done a reasonable job of improving the situation.[84]

Closing Migrant Labor Camps

Inspections of migrant labor camps almost never result in the closing of the camps. According to Philip E. McCaleb, chairman of the Migrant and Seasonal Farmworkers Commission:

It is extremely rare for a regulator, inspector, to close a labor camp because he is not permitted to do so under the law, unless it is a situation of immediate danger to health

[78] Transcript, p. 188.
[79] Transcript, p. 135.
[80] Transcript, pp. 157–158.
[81] *Guide for Serving Farmworkers*, p. 17.
[82] Spencer Cox, Transcript, pp. 63–64.
[83] Monica Heppel, Transcript, pp. 101–102.
[84] Ibid., p. 101.

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and life. . . .What happens as far as closing camps, you do not get an opportunity to, under a wage and hour inspection, to correct a defect. If it is existent at the time of the inspection, you are fined.

What frequently does happen: If there is a county health inspection prior to occupancy, which is in part advisory, you find a situation where it is going to cost X number of dollars to bring your camp up to standards or something like this; you can't afford it, then you close your camp. Those are the situations in which camps are closed.[86]

Jack D. Engler, executive vice president of the Association of Virginia Potato and Vegetable Growers, was asked by a member of the Virginia Advisory Committee if the migrant camps on Virginia's Eastern Shore should be taken over and run by the State. Engler replied:

I am in no position to say; I just can't answer that. . . .I don't know what you'd do in the interim.[87]

In response to the question of whether or not there might be opposition by the growers to government-owned and operated migrant camps (as was the case when the Farm Security Administration was in operation more than 40 years ago), Engler replied:

. . .the answer is that I don't know. I would simply respond to you that if I were a grower I would certainly feel favorably disposed to not having to provide housing.[88]

A migrant worker addressed Engler about his responses to the question of closing the camps:

You seem to have some reservation about answering whether or not the camps should be closed. I can answer it. . .directly. Visit one and come back and you will not have any reservations.[89]

Camp Regulations

Growers, migrant workers, and others at the open meeting held by the Virginia Advisory Committee in August 1982 seemed to agree that one of the major reasons housing conditions for migrant workers have not improved despite increased inspections is that the regulations don't directly address the underlying causes of those conditions.

Philip E. McCaleb observed that:

In large part, the resolution to a lot of these [housing] problems lies in regulations. . . .[90] But the key is the laws are drawn in such a way that you can legally abide the law and still not [have] first class accommodations.[91]

Another witness furnished personal experiences to back her allegation that regulations for migrant housing need to be completely overhauled:

. . .it is somehow possible for an inspector to come in and give a farmer an incredibly difficult time about some [condition] and let [other conditions] go right by, perhaps because they are not in the books. . .what we really need is a revamping of many of the regulations that are on the books and a rethinking in terms of the whole picture, rather than should there be one light bulb or two light bulbs in this area, or should there be screens when there are holes in the wall, and sort of deal with things on that level.[92]

Elliott A. Scruggs, director, Industrial Safety Division, Virginia Department of Labor and Industry, points out that the mobility of crewleaders and crews frustrates anyone attempting to force compliance with laws and regulations:

One problem in enforcing housing regulations or any other laws related to migrants is the fact that a migrant crew may be in a particular locality for 20 days or less. If the operator of the migrant camp, for example, is given 10 days in which to correct a situation, the entire crew may be gone before the 10 days are up. While it is possible to pursue the operator from State to State, by issuing a warrant and utilizing Federal marshals to deliver it, this is infrequently done.[93]

Economics of Migrant Housing

Since growers depend upon migrant workers to harvest their crops and to help them realize a profit, an obvious question arises: Why don't growers build decent migrant housing on their farms? The most frequent reply by growers is that migrant housing is not a sound investment.[94]

According to one grower, in order to build new housing for migrants, most growers would have to obtain a conventional loan at high interest rates and pay substantial monthly payments for up to 30 years. Rental income from migrants would come only during the summer months, as a general rule, and

[86] Transcript, pp. 110–111.
[87] Transcript, p. 88.
[88] Transcript, p. 89.
[89] Spencer Cox, Transcript, p. 90.
[90] Transcript, p. 48.
[91] Transcript, p. 51.
[92] Monica Heppel, Transcript, p. 105.
[93] Scruggs Interview.
[94] Philip McCaleb, *Migrant and Seasonal Farmworker Housing*, p. 270.

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because of their low levels of income, they could afford only a modest rent.[94] The remainder of the year, the houses would be empty except under unusual circumstances.

From the standpoint of a grower, anything that adds to labor costs is a deduction from the margin of profit the grower is able to realize from his agricultural production.

Farmers Home Administration

The Federal Government has established programs to provide insured loans to farmers who are unable to obtain or afford conventional loans in order to build migrant housing, if they meet eligibility requirements.

The principal public lending agency for farmers and rural communities in obtaining insured loans for housing is the Farmers Home Administration (FmHA), which has authority to make grants[96] and loans[96] for purposes of constructing or improving farm labor housing.

In 1978, amendments to the Consolidated Farm and Rural Development Act[97] extended eligibility for FmHA loans to private corporations, cooperatives, and partnerships, if they are controlled by family farmers and ranchers engaged primarily and directly in farming or ranching.[98]

However, growers have complained of a number of disincentives in trying to deal with FmHA and in meeting the eligibility requirements for the insured loans. To be eligible for a FmHA housing loan, the grower must, among other things, have sufficient operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums, if required, and other initial expenses.[99]

After the loan is made, the grower must have sufficient income to pay operating expenses, make necessary capital replacements, make payments on the loan, and accumulate reasonable reserves, as required.[100] Further, the housing must be used for migrant or seasonal farmworkers used in the farming operations[101] and be located on land that is owned by the grower.[102] A particular requirement that the grower also own the related land or become the owner when the loan is closed[103] poses a problem since such land may not be for sale, and the grower may not want the land even if it is for sale.[104]

Representative Henry B. Gonzalez observes that little improvement has been made in migrant housing since the 1930s. He points out that available FmHA money that could be used for migrant housing is not being used,[105] and that:

> . . .there is a need for 1.2 million housing units for migrant and seasonal farmworkers in the United States. Only one-third that many decent units are actually available today. . . .I realize that there is no way that anyone can economically provide housing for migrants. After all, this is housing that is occupied only a short time of the year. It is housing that is occupied by people who can pay very little rent. There is no way that anyone could build decent housing for migrants without substantial help or subsidization. There is just no way that migrant housing can pay its own way, no matter how well-intentioned a farmer may be.[106]

Jack D. Engler, executive vice president of the Association of Virginia Potato and Vegetable Growers, told the Virginia Advisory Committee that some kind of outside intervention is needed to help growers solve the problem of migrant housing:

> . . .the vital problem of housing. . .should be a part of a Federal-State-block grant, whatever, to relieve somehow. . .the independent businessman, the grower. . .from this horribly difficult problem. . . .[107]

[94] Ed Long, president, Somerset Growers Association, Ibid.
[95] 7 C.F.R. §1944.157(b) (1982).
[96] Id. at §1944.157(a).
[97] 7 U.S.C.A. §§1921–1966 (1973).
[98] Id. at §1941.
[99] 7 C.F.R. §1944.157(a)(3) (1982).
[100] Id. at §1944.157(a)(4).
[101] Id. at §1944.157(a)(6).
[102] Id. at §1944–157(a)(7).
[103] Id.
[104] See U.S. Commission on Civil Rights, *The Decline of Black Farming in America*, (Washington, D.C., February 1982), for an extensive treatment of FmHA.
[105] Representative Henry B. Gonzalez, *Migrant and Seasonal Farmworker Housing*, p. 2.
[106] Ibid., pp. 2–3.
[107] Transcript, p. 87.

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Chapter 4

Health and Nutrition

Statistics gathered by the Migrant Legal Action Program, Inc., reveal that the national average life expectancy among migrant workers is 49 years, compared to a national life expectancy in the general population of 73 years.[1] The rate of infant mortality is two to three times the national average. Among the factors contributing to this high rate of early death among migrants are poor sanitation, poor nutrition, alcoholism and drug abuse, and exposure to pesticides and herbicides.[2]

According to the East Coast Migrant Health Project, diseases among the east coast migrants of the U.S. may be grouped in four major categories:

1) Nutritional diseases, such as anemias, eye and skin disease, dental caries and bone malformations, high blood pressure and cardiac complications, vessel abnormalities, and diabetes;

2) sanitary diseases, such as hepatitis, diarrhea, food poisoning, worm infestation, and rodent and insect bites and contamination;

3) occupational diseases, such as fractures, loss of limbs and nails, muscle damage from stoop labor, and skin and lung damage from pesticides and weather exposure; and

4) social and communicable diseases, such as tuberculosis, venereal disease, childhood diseases incurred because of a lack of immunization, viral complications from colds and influenza; sickle cell anemia; and mental health problems such as child and spouse abuse and other psychological disorders as a result of continual oppression and deprivation.[3]

Lack of proper health care results in the early aging of migrants:

I've seen people 30, 40 years old and they are senile because of the bad kind of situation that they have to live in.[4]

Against this backdrop, the Migrant and Seasonal Farmworkers Association, Inc., a private, nonprofit organization devoted to upgrading the economic status of migrants and seasonal farmworkers and their families throughout Virginia, estimates that about 56 percent of migrant workers do not receive any regular medical attention.[5]

Health professionals cite conditions in the migrant camp as the cause for some of the health problems:

Living conditions do contribute a lot to their health status. . .we may have a family of 10 that may be living in one room and they have mattresses on the floors. . . .If the kid has diarrhea and if he is in such crowded living conditions, of course, there is a lot of potential for spread of that diarrhea to other members of the family and then to adjoining rooms.[6]

Children, in particular, suffer from camp conditions where lack of adequate space, supervision and

[1] Steven Nagler, executive director, Migrant Legal Action Program, briefing meeting for staff of the Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, Washington, D.C., June 3, 1982 (hereinafter cited as *Nagler Briefing*).

[2] Ibid.

[3] Franklin D. Williams and Pamela Y. Williams, *The Eastern Migrant Stream: CASJC Special Report.* (Church Action for Safe and Just Communities, April 1982), p. 9 (hereinafter cited as *CASJC Report*).

[4] Pauline James, Transcript, p. 171.

[5] Kevin W. Boyd, Transcript, p. 75.

[6] Jennifer Ruducha, Transcript, pp. 143–144.

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health care are problems. According to Jennifer Ruducha of the Delmarva Migrant Health Project:

. . .mothers may not have access to store the children's medications in a refrigerator or to store their bottles. So they are staying out of the refrigerator and that poses a very big health risk to the migrants.[7]

Dr. Fears pointed out to the Virginia Advisory Committee that there are several daycare centers on the Eastern Shore of Virginia run by the Virginia Council of Churches with Headstart funds,[8] but:

We do have some diarrhea in the daycare centers.[9] . . .More than one (child) has been in the hospital. . . .Migrant children have died of diarrhea in this area, but. . .not in the last few years.[10] You have to realize that in an ordinary daycare center your child comes to the daycare center and if he is sick, he is isolated and you take him home and you keep him home until he gets well; then you take him back. Not so in the migrant daycare center. You have to receive him the next day, sick or well, because he just doesn't have any other place to go.[11]

Ruducha stressed the need for daycare facilities for migrant children:

. . .with a lot of the children running around and vehicles driving very fast, pulling in and out, we had an incident a couple of years ago where a kid was killed because he was playing under a truck that just happened to pull out. They have no place to play, they don't have any type of a guarded area, any type of confined area so that they can play.[12]

Health Care Services

The Eastern Shore Health District, which includes the county health departments in Accomack and Northampton, provides residents of the Eastern Shore with preventive health care and environmental protection. Anyone, including migrant and seasonal farmworkers, is eligible for the services provided.[13] Fees are on a sliding scale, based upon ability to pay. Services include immunizations, home health, the Women, Infants, and Children (WIC) nutrition program, maternal and child health care, well-baby clinics, family planning, and control of venereal disease and tuberculosis.

Dr. Belle DeCormis Fears, agency and program director for the health district, describes the WIC program as:

. . .for pregnant and lactating mothers, infants up to the first year, and children to the 5th year who are financially and nutritionally eligible. And we consider just about all migrants financially and nutritionally eligible.[14]

We get special funds to have outreach. We have a nutritionist outreach worker in the migrant camps to acquaint migrants with this WIC program.[15]

Health district programs operate only during the day.[16]

The Delmarva Migrant Health Project is the major source of primary health care for migrant farmworkers on the Eastern Shore. The project is sponsored by Delmarva Rural Ministries and funded through a grant from the U.S. Department of Health and Human Services (HHS).

The Migrant Health Project is perhaps the best understood of all the services available to migrants.[17] According to Jennifer Ruducha, nurse coordinator:

We have a clinic in Nassawadox and we hire mainly nurses and nurse practitioners and outreach workers. Our outreach workers go out to the camps and they register all the migrants on the camps and in the houses that might be eligible for services.[18]

The health project provides both day and evening services:

Most of the time during the day, the nurses are in the clinics and we see walk-ins. We have a lot of walk-in patients during the day who are having problems who just come into our clinic. Then the nurses and the outreach workers go out in the evening and spend time with migrant farmworkers and take care of their problems.

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[7] Ibid., pp. 145–146.
[8] Dr. Belle De Cormis Fears, Transcript, p. 138.
[9] Ibid., p. 136.
[10] Ibid., pp. 136–137.
[11] Ibid., p. 138.
[12] Jennifer Ruducha, Transcript, p. 145.
[13] Dr. Belle De Cormis Fears, Transcript, p. 132.
[14] Ibid., pp. 137–138. Andrew P. Hornsby, Jr., Administrator of the Mid-Atlantic Region of the U.S. Dept. of Agriculture Food and Nutrition Service, commented that, "WIC program services include the provision of (a) specific supplemental food prescribed to address the health and nutritional needs of eligble persons and (b) nutrition education designed to emphasize the relationship between proper nutrition and good health." He also stated that, "persons are to be considered for eligibility on an individual basis according to medical standards prescribed for the program." (Letter to Edward Rutledge, September 13, 1983, hereinafter cited as Hornsby letter.)
[15] Dr. Belle De Cormis Fears, Transcript, p. 137.
[16] Ibid., p. 150.
[17] The migrant health program was the first program begun for migrant workers, starting in 1962.
[18] Jennifer Ruducha, Transcript, pp. 142–143.

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We only operate night clinics. Now because of some family planning concerns, we started operating a family planning clinic every other Sunday.[19]

Resources available to the health project fall short of need. Ruducha noted:

We do provide transportation, although that has been a real problem this year because we operate out of Nassawadox. Our whole service area is all the way up to the Maryland county line and all the way down to the Bay Bridge Tunnel, and we rent out our vehicles—our vans—and many times they are very old and they break down. So it is just extremely difficult trying to get people in because we do not have our own van and we do not have funds to purchase a van.

We have had to work out alternatives with the crewleaders, just doing all sorts of things, going out to the camps—nurses make camps visits, too, and they try to take care of as many problems out in the camp as possible, but many of the people are just so sick that do need to come in and see a doctor and need to have a medical diagnosis and need to be treated.[20]

I think our staff would need to increase. . .right now I think we are just basically meeting the minimal needs, survival needs, of the migrants.[21]

The health project relies on the migrant education tracking system (discussed in Chapter 5) whereby educational and health data on individual migrant children is computerized by the Federal government and made available to appropriate agencies serving the migrant stream. Ruducha observed that:

Many centers up and down the stream do not regularly put in additional information. So a lot of that information in that system is not updated, and therefore it is very difficult to get immediate information on that student's progress or their immunizations or anything like that. . . .[22]

Hospitalization

According to health care worker Virginia Ruducha, "Migrants are not eligible for medical assistance in the State of Virginia, and that has been a really big problem."[23] Of the three States sharing the Delmarva peninsula, Virginia is the only one that fails to provide any State funds for migrant hospitalization, per se, although it has three times as many migrants as either Delaware or Maryland. Although the State provides matching funds for hospitalization to each county, counties restrict use of the money to residents of 6 months or more.[24]

In 1982, the Delmarva Migrant Health Project received a one-time Federal grant of $30,000 for migrant hospitalization. According to Susan Canning, director of Delmarva Rural Ministries, migrant hospitalization costs that year in Virginia exceeded the grant by at least $100,000.[25]

William Baker of the State's Department of Social Services points out that migrants are eligible for medicaid to the same extent they are "categorically eligible"—that is, if they are aged, blind, disabled, or if they are care providers for children who qualify for aid to dependent children.[26]

His view is confirmed by an examination of Federal regulations. The regulations define a resident of a State as a person:

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.[27]

However, migrant advocate Kevin Boyd asserts that "We've never gotten anyone on medicaid; we're told they're not eligible because they're not residents."[28]

Notwithstanding the residency problem, however, it is clear that single adults likely to be migrant workers are not categorically eligible for medicaid.

Migrants are theoretically eligible for medical care in hospitals under the Hill-Burton Act,[29] but as a practical matter they rarely receive it. Under that act, hospitals that receive Federal funds for construction have an obligation to provide "a reasonable volume of services to persons unable to pay therefor." An exception is allowed "if such a requirement is not feasible from a financial viewpoint."[30] With a year-round population of eligible poor people, Delmarva hospitals usually fulfill their

[19] Ibid., pp. 149–150.
[20] Ibid., p. 146.
[21] Ibid.
[22] Ibid., p. 120.
[23] Ibid., p. 147.
[24] Susan Canning, director, Delmarva Rural Ministries, telephone interview, February 4, 1983 (hereinafter cited as Canning Interview).
[25] Ibid.
[26] Telephone interview, January 22, 1983.
[27] 45 C.F.R. §233.40(a)(1) (1982).
[28] Telephone interview, January 22, 1983.
[29] 42 U.S.C.A. §291–2912 (1982).
[30] Id. at §291(e).

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Hill-Burton obligation by providing services to longtime residents.[31]

This tenuous situation hampers proper medical treatment:

> It is only the crisis situations that we can really hospitalize migrants. . .For other problems. . .what we have been doing is just recommending to migrants that they go back home and they seek their own hospitalization or. . .medical assistance.[32]

Sarah Rosenbaum, of the Children's Defense Fund, calls the migrant hospitalization problem a "horrendous problem" all over the country. Even where medicaid benefits are not routinely denied, processing takes 45–60 days, longer than most migrants can wait. In a crisis, benefits can be made retroactive, but hospitals are reluctant to assume they will receive reimbursements, since the migrant may leave the area upon release and be unavailable to pursue a medicaid claim.[33]

If benefits are denied to Hispanic or Haitian migrants, they may have difficulty seeking legal help since legal services agencies are now restricted from assisting undocumented workers. Migrants may be unable to produce proof of citizenship.[34]

Food and Nutrition

"Nutrition is a serious problem among farmworkers," according to migrant advocate Kevin Boyd. "About 74 percent have no cooking or food storage facilities and do not participate in food programs and/or have no food at all."[35]

Migrant camps may have central kitchens that serve all workers or migrants may have access to kitchen facilities. All crewleaders who register under the Migrant and Seasonal Agricultural Worker Protection Act must inform workers in advance of any charges, including meal charges, that may be levied for crewleader services.[36] Regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA) state that where workers cook and sleep in the same room, 100 square feet of floor space per person must be provided, along with sanitary facilities for storing and preparing food.[37]

OSHA also provides that where common cooking facilities exist, they must be in an enclosed and screened shelter, with a ratio of one stove per 10 persons or one stove for every two families.[38] All such facilities must be installed "in accordance with State and local ordinances, codes, and regulations governing such installations."[39]

As an alternative to providing kitchen facilities, migrant camps may have central kitchen and dining facilities. Such facilities must adhere to U.S. Public Health Service regulations.[40]

Responsibility for assuring compliance with these regulations is delegated to the Eastern Shore Health District from the Virginia State OSHA program, which in turn gets its authority from the Federal Occupational Safety and Health Administration.[41] The health district inspects camps every 2 weeks.[42] For those migrants who are able to cook their own food, access to grocery stores and the money to purchase groceries can both be problems.

Because camps are likely to be isolated:

> A common practice is for the crewleader to go into town, because he generally has the transportation, and buy whatever foodstuffs or drinks or whatever he thinks may be needed, and he brings them back and resells it to the worker sometimes at double and triple the price that he paid for it.[43]

Farmworkers are eligible for food stamps if they meet the income requirements, but experience problems in getting them:

> People have reported to us for years difficulty in receiving food stamps at one of the local departments (of social services) here, and in fact we are having to litigate those kinds of problems for them on a regular basis.[44]

Sometimes the problems revolved around the role of the crewleader:

> I've had people coming through my office to tell me, "Yeah, we get food stamps, but we don't get them; the crewleader takes the car sometimes and goes to the post office and picks up everybody's food stamps." I can't believe this, because you are not supposed to give anybody else's mail to anybody else; but it happens. It happens here in Northampton and Accomack County.[45]

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[31] Canning Interview.
[32] Jennifer Ruducha, Transcript, p. 147.
[33] Telephone interview, February 3, 1983.
[34] Ibid.
[35] Transcript, p. 75.
[36] 29 U.S.C.A. §1821(a) (1975 and 1983 Supplement).
[37] 29 C.F.R. § 1910.142(b)(9) (1982).
[38] Id. at §1910.142(b)(10).
[39] Id. at §1910.142(b)(11).
[40] Id. at §1910.142(i)(1).
[41] 29 C.F.R. §1952.370 (1982).
[42] Dr. Belle De Cormis Fears, Transcript, p. 135.
[43] Kevin Boyd, Transcript, p. 74.
[44] Michael T. Robinson, Transcript, p. 187.
[45] Pauline James, Transcript, p. 169. According to the Mid-

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One migrant who seeks work directly from farmers reports trouble as well without a crewleader:

We migrate all the way from Florida. We live on Virginia streets and we bear our own expenses up, and then when we go up there to get help from this man, he turned us down and tell us we got to have a certificate to sign up, from a crewleader; but we don't have a crewleader.[46]

Pursuing food stamp denials, as with other administrative appeals, is often not an option because the migrants will have moved on before any appeal can be processed.

Pesticides

The use of pesticides is regulated by the Federal Insecticide, Fungicide, and Rodenticide Act[47] (FIFRA) and the Virginia Pesticide Law.[48] FIFRA regulations require that:

When workers are expected to be working in a field treated or to be treated with a pesticide, appropriate and timely warning to such workers shall be given.

The warning may be oral or in writing, by posting at field entrances or other places where workers gather for instruction. Responsible persons must be sure that workers who cannot read are told orally, and that workers who do not speak English receive warnings in the language they do speak.[49]

The State law is enforced by the Commissioner of Agriculture and Consumer Services. The Board of Agriculture and Consumer Services is responsible for regulations regarding the sale, distribution, use, and disposition of pesticides.[50] The Commissioner licenses commercial and private pesticide applicators (persons).[51]

Alcoholism and Alcohol Abuse

Alcohol abuse is also a serious problem in many camps. Its prevalence was explained by Monica Heppel, who lived as a migrant worker while doing research:

I drank more living on the camps than I have ever drunk in my life. I think if I stayed there, I'd probably drink a whole lot more. It is easier to deal with mattresses that have stuffing coming out and rats running around and the smell of garbage and privies that haven't been emptied, or port-a-toilets that perhaps passed inspection at the beginning of the season but then haven't been changed. . . .At that point it is easier to drink. . .you can't blame the victim for that kind of response. . . .[52]

In addition to camp conditions, Heppel cited monotony as a cause of heavy drinking:

Something that needs to be dealt with. . .is monotony. It is living on these isolated labor camps, seeing the same people day after day with very little to do. That leads again to the drinking, to an increase in violence, to dissatisfied workers, which isn't to the benefit of really anyone.[53]

Dr. Heppel also observed that migrants are able to buy beer and cigarettes from crewleaders. Pauline James, of the Migrant and Seasonal Farmworkers Association, observed:

We had people come in having made $100; they draw three pennies. You wonder where all that money went, but then when they start taking out for rent, for food, for cigarettes, which are $1.00 a pack now, a fifth of wine, $6.00, and stuff like that, they can't help but draw three cents. And these people do drink, they drink, they have to drink, they have to do something to forget where they are. If I lived on a camp, I would drink if it made me forget. . . .[54]

The selling of alcoholic beverages and tobacco by crewleaders is illegal. In response to a question as to how the practice could be so widespread, Philip McCaleb, a member of the Migrant and Seasonal Farmworkers Commission, replied:

This is an item that the commission has studied very carefully. The State ABC Board monitors the sale of alcohol very ineffectively. The difficulty in the monitoring of this type of program is the ability to identify outsiders, i.e., undercover investigators. It is extremely difficult to infiltrate and get the goods on the illegal sale of alcohol in this area. As far as tobacco is concerned, I don't know about that, that's not been a subject for any discussion. But it is something we identify as a definite problem. However, the majority of the enforcement effort is being put forth by the ABC Board which is trying to do everything else. I would say it is definitely categorized as inadequate.[55]

The Virginia Department of Alcoholic Beverage Control agrees that the sale of liquor in migrant

Atlantic Food and Nutrition Service Administrator. "Such activity is legitimate as long as the crew leader is designated as an 'authorized representative' in accordance with Federal regulations." (Hornsby letter.)

[46] Lonnie Westbrook, migrant worker, Transcript, p. 61.

[47] 7 U.S.C.A. §136–136(y) (1980).

[48] Va. Code §§3.1–189—3.1–249 (1950).

[49] Ibid.

[50] Va. Code §3.1–217 (1950).

[51] Id. at §3.1–249.2

[52] Transcript, p. 101.

[53] Ibid.

[54] Transcript, p. 169.

[55] Transcript, pp. 172–173.

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camps is a problem. An ABC official noted that enforcement is complicated by the fact that crewleaders sell only to migrants within their camp and that often no money actually changes hands. A paid informer program whereby migrants can be employed to expose such sales is available but is generally not utilized by migrant workers.[56]

Treatment for migrants of alcoholism and alcohol abuse is available from the Eastern Shore of Virginia Alcohol and Drug Abuse Services, headquartered in Onancock. Fees are on a sliding scale.[57]

Health Program Funding

Both Dr. Fears of the Eastern Shore Health District and Jennifer Ruducha of the Migrant Health Project agree that targeted funds for migrants are a must. Ruducha has said:

I think that in terms of the block grant program, in every category, I think, that would affect migrant farmworkers, there needs to be some type of a policy set to identify migrants as a target population that needs to be serviced. And in the WIC program where the health department hires someone extra during the summer to handle the burden, the load of patients, I think maybe that is something that should be instituted in the other areas, in the (health district's) prenatal program and in the family planning.[58]

Dr. Fears concurs:

They (migrants) are in so many different communities that it is confusing. One community does it this way, one does it another way. . .it is my belief that migrants will need a categorical grant to meet their special needs because of their migrancy. They will need outreach.[59]

The current Federal targeting of migrant funds also facilitates interstate cooperation, according to Ruducha:

Just pointing out the necessity of maintaining migrant health at the national level—our project operates in two other States, in Maryland and Delaware also. . .Just from that experience alone we are able to transfer a lot of information just amongst ourselves and be better able to coordinate services for migrants who travel along the Delmarva peninsula.[60]

[56] Raymond A. Little, Assistant Director, Regulatory Division, Virginia Department of Alcoholic Beverage Control, letter to Edward Rutledge, August 29, 1983.
[57] *A Guide for Serving Farmworkers in the State of Virginia* (Richmond: Migrant and Seasonal Farmworkers Association, Inc., 1982), p. 44.
[58] Transcript, p. 147.
[59] Transcript, p. 133.
[60] Transcript, p. 142.

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Chapter 5

Education

Migrant students do not belong to any one State. They belong to the Nation.[1]

Migrant children between the ages of 3 and 21 are the primary focus of this chapter, since they receive the most intensive educational services. They come to the Eastern Shore primarily during the summer months, but some arrive as early as February and stay as late as November.[2]

Ninety percent of the migrant children are home-based in Florida, 5 percent in Texas, and 5 percent in other States, territories, or foreign countries.[3] In recent years, the number of Haitian migrant children rose substantially, increasing 15 percent from 1981–82.[4] Of the migrant children on Virginia's Eastern Shore in 1982, 50 percent were Mexican-Americans, 43 percent were black Americans, 4 percent were black Haitians, 2 percent were white, and 1 percent were children of other races.[5]

Need for Special Education

In 1981–82, 85 percent of the migrant children received in Virginia were performing at least one or more grade levels below their peers in reading skills.[6] That 85 percent also needed remedial assistance in other basic subjects such as math and oral language.[7] In a special survey conducted by school personnel in Virginia in 1981–82, at least 98 percent of the migrant children received in the State indicated they would like to participate in some kind of special educational activity.[8] Non-English speaking students were especially interested in learning to speak English.[9]

Migrant children on the Eastern Shore of Virginia, like migrant children throughout the Nation, are generally being reared by parents who have dropped out of school.[10] Approximately 60 percent of the migrant workers on Virginia's Eastern Shore who were 16 years of age or older in 1981 were school dropouts with the equivalent of about a 7th grade education.[11]

The Federal Government, primarily through the U.S. Department of Education, has provided financial assistance to States to develop programs to assist educationally deprived children such as migrant children.[12]

[1] George H. Irby, supervisor, Virginia Migrant Education Program. Transcript, p. 116.
[2] Jennifer Ruducha. Transcript, p. 121.
[3] Commonwealth of Virginia, *Fiscal Year 1983 Virginia Migrant Education Program Application* (submitted to the U.S. Department of Education), p. 19 (hereinafter cited as *Migrant Education Plan*).
[4] A. K. Fisher, assistant superintendent, Accomack County School Board, Transcript, p. 111.
[5] George H. Irby, interview in Richmond, Virginia, September 13, 1982 (hereinafter cited as Irby Interview).
[6] *Migrant Education Plan*, p. 4.
[7] Ibid.
[8] Ibid.
[9] A. K. Fisher, Transcript, p. 112.
[10] U.S. Department of Agriculture, *The Hired Farm Working Force of 1979*, Agricultural Economic Report Number 473, August 1981, p. 8. See also, U.S. Department of Commerce, *Educational Attainment in the United States: March 1979 and 1978*, Series P-20, No. 356, Bureau of the Census, 1980.
[11] Migrant and Seasonal Farmworkers Association, Inc., Richmond, Virginia, *Statistical Data* for October 1, 1980–September 30, 1981, and Kevin Boyd, Transcript, p. 73.
[12] 34 C.F.R. §200.1 (1982).

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Migrant Education Program

In 1965, Congress enacted the Elementary and Secondary Education Act (ESEA) which provided financial assistance to States to meet the special educational needs of migratory children.[13] Title I of that act became known as the Title I Migrant Education Program. This categorical grant program was subsumed under the Educational Consolidation and Improvement Act of 1981.[14]

The new law retains most of the original program and was included among the categorical programs consolidated under the elementary and secondary block grant created by the Omnibus Budget Reconciliation Act of 1981.[15] As previously required, States must submit a State plan to the U.S. Department of Education for approval in order to receive funds to operate a migrant education program.[16] It is the responsibility of the local agencies to administer and operate their respective projects and programs in accordance with the State plan.[17]

In Virginia, the State agency is the Virginia Department of Education, and its Division of Compensatory Education (ECIA) serves as the fiscal agent. This division also directly supervises the migrant education program subgrantees.[18]

Accomack and Northampton counties are the only school divisions that operate a comprehensive migrant education program in the State.[19] Their program primarily serves children 3–21 years old.[20]

As required by regulations of the U.S. Department of Education, a State seeking funding for a migrant education plan under Chapter I must submit to the Secretary of Education an annual program plan that addresses:

1) instructional services in basic skills and special areas;

2) identification and recruitment of migrant children;

3) interstate coordination; and

4) support services.[21]

[13] 20 U.S.C.A. §241E(c) (1974).
[14] Education Consolidation and Improvement Act of 1981, Title V, §§551-596, August 13, 1981, 95 Stat. 463–482.
[15] 20 U.S.C.A. §3803(a)(2) (1978).
[16] 34 C.F.R. §204.10 (1982).
[17] Id. at §204.30.
[18] Irby Interview; also Dr. N. Grant Tubbs, administrative director, Office of Special and Compensatory Education, Va. Dept. of Education, letter to Edward Rutledge, August 23, 1983.
[19] Irby Interview.
[20] George H. Irby, Transcript, p. 117.

Instructional Services

The Virginia Migrant Education Program offers two types of instructional programs—a comprehensive 8-week summer program and a tutorial assistance program that operates during the regular school term.[22]

Tutorial Assistance Program

Migrant children in Virginia during the regular school year are required by compulsory school attendance laws to attend an appropriate school in the area in which they reside.[23] About 27 percent of the migrant children living in the State during the regular school year reside in Accomack and Northampton counties.[24] In the beginning weeks of September 1982, 352 migrant children were attending regular school in Virginia. Of this number, 41 migrant children were in school in Accomack County and 88 in Northampton County.[25]

A tutorial assistance program is offered in the valley area and the southwest area of Virginia, but it is not available on the Eastern Shore.[26]

Migrant students are in the valley area for approximately 2½ months, usually from September until mid-November. Most are elementary school age children. While attending regular classes, they also receive tutorial assistance in reading, mathematics, and language arts. When needed, bilingual education is provided.[27]

During the winter, home-based migrant students residing in the valley and southwest areas receive tutorial assistance in reading, mathematics, social studies, and science. These students are usually high school age and attend regular classes. In addition, two local migrant programs offer outdoor education, English as a second language, a GED testing program, special education, and other subjects in which tutorial assistance is needed.[28]

[21] 34 C.F.R. §204.12 (1982).
[22] *Migrant Education Plan*, p. 13.
[23] Va. Code §22.1-254 (1950).
[24] Commonwealth of Virginia, Virginia Migrant Education Program, Enrollment Data as of September 13, 1982, (unpublished) (hereinafter cited as *Enrollment Data*).
[25] Ibid.
[26] *Migrant Education Plan*, p. 13.
[27] *Migrant Education Plan*, p. 15.
[28] Ibid.

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Summer School

Migrant children are not required by law to enroll in school during the summer months.[29] However, since 1967 the State has operated a summer migrant education program on the Eastern Shore.[30]

In the summer of 1982, 1,143 migrant children were enrolled in the migrant education program on the Eastern Shore. Of this total, 777 were in Accomack and 366 in Northampton Counties.[31]

The duration of the program depends upon the length of time migrant children are in the area. For about an 8-week period, roughly between the middle of June and the middle of August, special instruction is given in language arts, reading, mathematics, early childhood education, movement education, music, social studies, art, and English.[32] For migrant children who work in the fields during the day, evening and Saturday classes are offered in subjects such as engine repair, typing, home economics, woodworking, and English for non-English speaking students.[33]

Bilingual Needs

As noted above, Haitian children are increasing in number during the summer on the Eastern Shore. They are described as very eager to learn English.[34] Some Mexican-American children also need to strengthen English-speaking skills. Although the U.S. Department of Education does not require that the migrant education program provide bilingual education, this component is included when possible.[35]

Title VI of the Elementary and Secondary Education Act, known as the Bilingual Education Act,[36] provides Federal funds to school districts with a large concentration of non-English speaking children so the districts may "encourage the establishment and operation. . .of educational programs using bilingual educational practices, techniques, and methods. . .for children of limited English proficiency, to achieve competence in the English language."[37] The money may be used for vocational education, adult education, cultural appreciation, etc., in an effort to prevent the dropout of students that have limited English-speaking ability.

While school divisions on the Eastern Shore offer English as a second language course, they do not have a fully-developed bilingual component in the migrant education program.[38]

Preschool and Adult Migrants

The Virginia Council of Churches has sponsored a daycare headstart program both in Accomack and Northampton counties for migrant children from 2 weeks up to 3 years old.[39] This program helped to enable school-age migrant children to enroll in the 8-week summer program, since they might otherwise have stayed in the migrant camps to care for preschool siblings.[40]

The Virginia Employment Commission offers some aptitude testing services,[41] and the Virginia Migrant and Seasonal Farmworkers Association, Inc., (MSFA) has provided some general educational courses for migrants.[42]

Interstate Coordination

One of the problems frequently encountered by migrant students is discontinuity in what they learn from one school district to another.[43] Some informal efforts have been made in the eastern migrant stream States (from Florida to Maine) to exchange instructional materials used to educate migrant children.[44] Workshops and conferences such as the Eastern Stream Interstate Conference and the National Migrant Education Conference have encouraged more formal planning for interstate coordination.[45]

In 1966, States with migrant education programs developed and funded a procedure for exchanging information and records on migrant students. In 1970, the procedure became a computerized system known as the Migrant Student Record Transfer System (MSRTS) to help school districts design instructional programs especially for migrant students.[46] This system contains information on every

[29] Va. Code §22.1-254 (1950).
[30] A. K. Fisher, Transcript, p. 111.
[31] *Enrollment Data.*
[32] *Migrant Education Plan,* p. 13.
[33] Ibid.
[34] A. K. Fisher, Transcript, p. 112.
[35] Irby Interview.
[36] 20 U.S.C.A. §§3221-3261 (1978).
[37] 20 U.S.C.A. §3222(a) (1978).
[38] Irby Interview.
[39] *Guide to Serving Farmworkers,* p. 8.
[40] Irby Interview.
[41] Virginia Employment Commission, "Services to Migrant and Seasonal Farmworkers," (Richmond, Virginia, 1982), p. 3.
[42] *MSFA Data,* p. 39.
[43] A. K. Fisher, Transcript, p. 113.
[44] *Migrant Education Plan,* p. 19.
[45] Ibid.
[46] Irby Interview.

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migrant child that has been enrolled by any school district in the U.S. and Puerto Rico during the year.[47]

As migrant children move from one school district to another, their individual educational and health records may be obtained by any school official. MSRTS data compiled in each school district for each migrant student enrolled is forwarded to regional migrant centers to be sent to the national migrant center in Little Rock, Arkansas. The national migrant center maintains the data.[48]

Accomack County operates the regional migrant center at Mappsville[49] which carries out several important functions in the operation of migrant education programs. It maintains the MSRTS, health and skills transmittal system, and migrant identification and recruitment information; provides inservice training; disseminates data to school districts about individual migrant students; and reviews migrant education programs.[50]

The Eastern Shore Health District and other agencies providing health care for migrant children utilize the health information contained in the MSRTS system[51] (see Chapter 4). However, due to the frequency with which some students move from one school district to another, those submitting data for MSRTS do not always have time to report what they have available before it is needed by the next school district.[52] The results of the Research Triangle study, released in December 1981 and made available to MSRTS, indicated the need to improve both the timeliness and accuracy of data for MSRTS.[53]

Identification and Recruitment

The identification and recruitment of migrant students is required of State education agencies receiving Federal migrant education funds.[54] The U.S. Department of Education views these activities as essential not only to the effectiveness of any migrant education program, but also to the gathering of data for the MSRTS.[55]

The Mappsville center provides inservice training for local staff, including home-school coordinators who play the central role in identification and recruitment of migrant students.[56] Virginia's supervisor of migrant education, who has the direct responsibility for assuring the identification and recruitment of migrant students throughout the State,[57] hires home-school coordinators for each school division offering a migrant education program. Home-school coordinators are responsible for identifying and recruiting migrant students onsite in the migrant camps. They must also submit a student authorization and enrollment form to the regional migrant center for each migrant identified and recruited.[58] These data, in turn, are submitted to the national MSRTS center.

Migrant education staff in Virginia believe that more migrant children will be identified and recruited in 1983–84 than in any previous year, for several reasons. First, data indicate that agricultural production requiring hand-harvesting may increase significantly.[59] Also, MSRTS tracking reports for the 1982–83 school year predicted an increase in migrant students residing in Virginia by 1983–84 of as much as 10 to 20 percent.[60] Based on these and other data, the Virginia Migrant Education Office estimated in its 1983-84 State Plan that 2,000 migrant children would probably be identified and enrolled in the MSRTS.[61] This figure included 210 preschool, 1,035 elementary, and 755 secondary migrant students.[62]

According to the State supervisor of the migrant education program:

> There was some difficulty in gaining access to the migrant camps when recruitment of migrant students for the migrant education program originated. But, in general, crewleaders have been supportive of recruitment efforts in recent years. [Home-school] coordinators hired to recruit migrant students for the program found children playing in cars while their parents were in the fields and often without adult supervision. Without adult supervision, they

[47] Winford Miller, director, MSRTS, telephone interview, June 1983.
[48] Ibid.
[49] Ibid.
[50] *Migrant Education Plan*, p. 7.
[51] Jennifer Ruducha, Transcript, pp. 119–120.
[52] Ibid.
[53] *Migrant Education Program Study, 1976-1981* (Research Triangle Park, North Caroline: Research Triangle Institute), cited in the *Migrant Education Plan*, p. 5.
[54] 34 C.F.R. §204.12 (1982).
[55] *Migrant Education Plan*, p. 7.
[56] Ibid.
[57] Ibid.
[58] Ibid.
[59] *Virginia Facts and Figures 1981* (Richmond: Governor's Office, Division of Industrial Development), p. 1 and p. 4, cited in the *Migrant Education Plan*, Needs for Assistance Chart, p. 4.
[60] *Migrant Education Plan*, Needs for Assistance Chart, p. 4.
[61] Ibid., p. 9.
[62] Ibid.

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were lacking in proper care they needed for food, safety, and improving communication skills.[64]

Local Support Services

Home-school coordinators, school nurses, counselors, school psychologists, speech therapists, and other staff personnel not only serve the special needs of migrant children in the migrant education program but also refer migrant children and adults to other agencies on the Eastern Shore that may be able to serve their needs.[65] Approximately 90 percent of the migrant children residing in Virginia during the year need medical, dental, speech, auditory, or other services.[66] Also, 75 percent of the migrant children enrolled in the migrant education program receive their most nutritious meal at school, and 90 percent lack at least one item of clothing to be able to attend school.[67]

Because of the transportation problems encountered by migrants, transportation is provided for migrant children from the migrant camps to the schools and for their return home each day.[68]

In addition to the Virginia Council of Churches, the Virginia Migrant and Seasonal Farmworkers Association, Inc., and the Virginia Employment Commission, other agencies that provide services for migrant children and adults include the Virginia Department of Public Health, which conducts health examinations for all migrant children recruited for the summer migrant education program, and the Virginia Department of Mental Health, which offers services to migrant children or adults as needed.[69] The U.S. Department of Agriculture, under authority of the National School Lunch Act,[70] provides surplus food for education programs when commodities are available.[71]

Monitoring and Evaluation

Regulations of the U.S. Department of Education[72] require that parents and guardians of migrant children involved in the migrant education program have an opportunity to participate in the planning, operation, and evaluation of the State plan submitted to the U.S. Department of Education. Virginia has created the Virginia Migrant Education State Parent Consultation Committee, which reviews the goals and objectives of the State plan, discusses concerns about the Migrant Education Program, and makes recommendations to the State supervisor of migrant education.[73]

The Virginia Migrant Education State Parent Consultation Committee is composed of people in the State who are elected at-large to the Committee.[74] A majority of the members are either parents or guardians of migrant children eligible to participate in the migrant education program.[75]

The State supervisor of migrant education programs, Virginia Department of Education, prepares the State plan submitted to the U.S. Department of Education and assists in the design, operation, and evaluation of local programs funded for migrant children.[76]

Compliance

The State supervisor of the migrant education program must monitor local programs to ensure compliance with civil rights assurances, the State Plan, and Federal regulations for the Migrant Education Program. If the State supervisor finds noncompliance in any local migrant program, he or she must take steps to bring the program into compliance.[76]

If a Federal audit discloses substantial noncompliance, the U.S. Department of Education may withhold Federal assistance in whole or in part or enter into a compliance agreement with the State educational agency.[77]

Recent changes in Federal migrant education regulations have significantly decreased the size of Virginia's program. In 1982, the U.S. Department of Education reduced funding for Virginia's 1982–83 State plan by 15 percent. This reduction was the result of a new interpretation of a previously published regulation regarding the meaning of the word "guardian."[78]

According to George Irby, participation by migrant children between the ages of 0 and 21 in any

[64] Irby Interview.
[65] *Migrant Education*, p. 17.
[66] Ibid., p. 5.
[67] Ibid., p. 6.
[68] Ibid., p. 17; Irby Interview.
[69] *Migrant Education Plan*, p. 22.
[70] 42 U.S.C.A. §§1751–1769c (1978).
[71] 42 U.S.C. §1758(c) (1978).
[72] 34 C.F.R. §204.12 (1982).
[73] *Migrant Education Plan*, p. A–1.
[74] *Migrant Education Plan*, p. A–2.
[75] Ibid.
[76] Irby Interview; *Migrant Education Plan*, p. 22.
[77] *Migrant Education Plan*, p. 1.
[78] 34 C.F.R. §200.260(a) (1982).
[79] Irby Interview.

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special migrant education program was subject to the consent of either a parent or guardian.[79] In 1982, the U.S. Department of Education ruled that this requirement could be met only when the guardian is a legal guardian.[80] Prior to this ruling, crewleaders sometimes acted as guardians, not only in Virginia but also in other States, for the purpose of giving consent for education in the absence of a parent.[81]

Virginia's State Plan was based on an estimated number of migrant children for whom consent would be given by a crewleader, since their parents would not ordinarily be available.[82] The requirement that such migrant children have the consent of either parent or a legal guardian may make many children ineligible for the migrant education programs funded by Chapter 1.

In addition, the State Plan for 1982-83 estimated that the program would serve approximately 1,812 currently migratory children and 88 formerly migratory children.[83] These estimates were based on the definition of migrant children contained in current regulations.

A change in the definition of "currently migratory child" was subsequently proposed as follows:

> Currently migratory child means a child—
>
> (1) whose parent or guardian is a migratory agricultural worker or a migratory fisherman; and
>
> (2) who has moved from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—within the past 12 months, and during the regular school year, and had his education interrupted as a result of the move. The move must have been made to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in agricultural or fishing activity.[84]

If this definition were adopted, the amount of money received by Virginia for its migrant education program would be reduced more than 50 percent,[85] since the new definition would completely eliminate the eligibility of migrant children who travel with their parents only during the summer months. (Their education would not have been interruped by migrancy.)

Higher Education Act of 1965

The Higher Education Act of 1965,[86] as amended, has provided two programs to assist migrant and seasonal farmworkers complete high school and enter college. They have been referred to, respectively, as the high school equivalency program (HEP) and the college assistance migrant program (CAMP).[87] HEP seeks to recruit school dropouts between the ages of 17 and 24 years and provide services that will enable them to study without working.[88] Participants receive room and board and a stipend for personal expenses while living on a college or university campus and attend classes at least 30 hours a week geared toward preparing them to pass the general education development (GED) examination. If necessary, they also receive tutoring services, counseling, and placement assistance. CAMP provides assistance to first-year undergraduates in an effort to help them remain in college the remaining 3 years. They receive tuition scholarships, a stipend for personal expenses, tutoring, counseling, and help in obtaining financing after the first year.[89]

The beneficiaries of these two programs have been primarily blacks and Hispanics. They have been 80 percent successful in passing the GED and 98 percent successful in completing the first year of undergraduate school under the CAMP program. Of those passing the GED, 90 percent have entered college or job training programs or become employed full-time.[90] Due to proposed cutbacks in funds, and possibly no funding after fiscal year 1983, these two programs are in jeopardy.

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[79] Ibid.
[80] 34 C.F.R. §204.3(d)(5)(i) (1982).
[81] Irby Interview.
[82] Irby Interview.
[83] *Migrant Education Plan*, p. 9.
[84] 47 Fed. Reg. 54722 (1982).
[85] Irby Interview.
[86] 20 U.S.C. §1070d-2 (1978). See also U.S. Commission on Civil Rights, *Statement on the Fiscal Year 1983 Education Budget*, October 1982, p. 23.
[87] Id. See also, U.S. Department of Education, Office of Planning, Budget and Evaluation, *The Annual Evaluation Report*, Vol. II, Fiscal Year 1981.
[88] *Annual Evaluation Report*, 1981.
[89] Ibid., p. 411.
[90] Ibid.

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Chapter 6

Findings and Recommendations

Chapter 1: Introduction

Finding 1:1 There is no uniform method at the Federal, State, and local levels of government of making an accurate count of migrant workers and tracking their location during the migrant season. Therefore, it is difficult to plan adequate programs and law enforcement procedures for migrant workers.

Recommendation 1:1 A uniform system for counting migrant workers and tracking their location during the migrant season should be established by the Federal, State, and local levels of government, similar to the uniform system that is used to count migrant children and their location in school districts.

Chapter 2: Recruitment and Employment

Finding 2:1 Growers on Virginia's Eastern Shore are nearly unanimous in their refusal to use the Virginia Employment Commission for recruitment of migrant laborers. This practice results in a reduced level of protection for Virginia's migrant workers.

Recommendation 2:1 The Virginia Employment Commission should devote more time and resources toward persuading growers to use the clearance order system for the recruitment of migrant workers and should work more closely with growers to keep them informed of Federal and State regulations.

Finding 2:2 Many migrants are paid less than the minimum wage by crewleaders, who fail to document and maintain records on employee wages, hours, and deductions as required by Federal regulations. One result of this failure is that migrant workers in Virginia have difficulty qualifying for unemployment compensation insurance.

Recommendation 2:2 The U.S. Department of Labor should improve monitoring and enforcement of Federal laws such as the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

Chapter 3: Housing

Finding 3:1 Migrant housing on Virginia's Eastern Shore is deplorable with housing structures ranging from chicken houses to barns. Commonly cited problems include mosquito infestation, overflowing privies and septic tanks, lack of hot water for bathing, rotten ceilings and roofs, and walls with holes.

Recommendation 3:1 The Department of Labor should strictly enforce the housing assurances guaranteed under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Fair Labor Standards Act (FLSA), and the Occupational Safety and Health Act (OSHA). In addition, the Eastern Shore Health District and the Virginia Employment Commission should make increased use of outreach workers to locate and monitor housing conditions in Virginia's more isolated areas.

Finding 3:2 Current bi-weekly housing inspections by the Eastern Shore Health District are inadequate to provide migrants even the most minimal protections required by Federal and State law.

Recommendation 3:2 Inspection of migrant labor camps by the Eastern Shore Health District should be increased at least to the level of weekly inspections as was previously done when the program was federally funded.

Finding 3:3 Virginia's statutory definition of a labor camp as a structure housing 10 occupants, at least one of whom must be a migrant, sets too high a ceiling and allows many migrant housing units housing fewer than 10 occupants to avoid regulation under State law.

Recommendation 3:3 Legislation defining migrant labor camps should be revised so as to reduce the level of occupancy required to bring housing units within the jurisdiction of the Eastern Shore Health District.

Chapter 4: Health and Nutrition

Finding 4:1 The level of medical services available to migrants on Virginia's Eastern Shore is inadequate. Moreover, poor housing and other factors such as poor nutrition, alcoholism, lack of recreation, and isolation adversely affect the physical and mental health of Virginia's Eastern Shore migrants.

Recommendation 4:1 Funds specifically earmarked for migrants should be made available by the State for use by such groups as the Delmarva Health Project, the Eastern Shore Health District, and others to meet the special health needs of migrants.

Finding 4:2 Virginia's Eastern Shore migrants experience difficulty in qualifying for entitlement programs such as food stamps and medicaid. This difficulty is caused, in part, by inconsistent requirements in the various Eastern Shore communities.

Recommendation 4:2 A uniform system for determining eligibility requirements should be established for all of Virginia's Federal or State funded benefits programs.

Finding 4:3 Migrants generally lack health insurance. Virginia, unlike most states, provides no State funds for migrant hospitalization.

Recommendation 4:3 Virginia should appropriate money so that migrants can utilize hospitals as needed on the same basis as residents of Virginia.

Finding 4:4 Alcoholic beverages are sold to migrants by crewleaders in apparent violation of State and Federal law.

Recommendation 4:4 The Virginia Department of Alcoholic Beverage Control should devise effective ways to detect and prosecute violations of State law. The Federal Bureau of Alcohol, Tobacco, and Firearms in the U.S. Department of the Treasury should investigate possible violations of the Internal Revenue Code resulting from the resale of liquor to migrants by crewleaders.

Chapter 5: Education

Finding 5:1 Virginia's Department of Education, Office of Special and Compensatory Education, offers an aggressive program of migrant education that meets or exceeds requirements of the U.S. Department of Education.

Recommendation 5:1 The Office of Special and Compensatory Education should continue its aggressive policy of providing a comprehensive program of migrant education.

Finding 5:2 A new Federal interpretation of the term "guardian" in determining the eligibility of migrant children to participate in the migrant education program has resulted in the loss of eligibility for hundreds of migrant children and has caused a 15 percent reduction by the U.S. Department of Education in funding for Virginia's 1982–83 State plan.

Recommendation 5:2 The Federal Government should continue to allow crewleaders to register migrant children for education programs and should adopt measures designed to encourage, rather than discourage, participation in such programs.

Finding 5:3 Studies predict that the number of migrant children in Virginia will increase at the same time that Federal funds for migrant education are being cut for budgetary and regulatory reasons.

Recommendation 5:3 Targeted Federal funds should continue to be provided in amounts sufficient to meet anticipated need.

COMMONWEALTH of VIRGINIA

Office of the Governor
Richmond 23219

Joseph L. Fisher
Secretary of Human Resources

August 9, 1983

Mr. Edward Rutledge
Regional Director
United States Commission on
Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D. C. 20037

Dear Mr. Rutledge:

Thank you for your letter of August 2 enclosing the draft report on migrant workers on the Eastern Shore of Virginia. I note you have asked Dr. Kenley, Commissioner of Health in Virginia, for his comments also.

Dr. Kenley's reply will cover my views also.

Sincerely,

Joseph L. Fisher

JLF/sew

cc: Dr. James B. Kenley

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Appendix: Agency Responses

COMMONWEALTH of VIRGINIA

Department of Health
Richmond, Va. 23219

JAMES B. KENLEY, M.D.
COMMISSIONER

August 19, 1983

Mr. Edward Rutledge, Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L. Street N.W., RM. 510
Washington, D.C. 20037

Dear Mr. Rutledge:

The 1980 General Assembly recodified Title 32 of the Code of Virginia. In response to these new health laws of Virginia that govern migrant labor camps, the State Board of Health promulgated regulations, and these became effective November 1, 1980.

The health department has a definite interest in the migrant workers who are in and passing through the Commonwealth, and we maintain surveillance over all known migrant labor camps that meet the definition as expressed in Section 32.1-203 of the Code of Virginia. Our reports indicate that these camps maintain reasonable compliance with the regulations. For those that do not comply, corrections are made with prompt response. We have received complaints at the local level only, where they have been handled.

Regarding other services related to nutrition, tuberculosis, venereal disease, and other health problems, etc., our local departments use, to the best of their ability, the resources they have in helping migrant workers and their families. However, because they are a moving target, the difficulties in providing services to these individuals and families, and as expressed in the Commission's report, are disturbing and appear to require approaches to these problems that currently have not been solved with the resources that we have available.

The Commission can be assured that we in Virginia will explore all avenues available to us to carry out our responsibility to protect the health and safety of those migrant workers and their families in Virginia.

Sincerely,

for James B. Kenley, M.D.
State Health Commissioner

AUG 25 1983

VDH

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COMMONWEALTH of VIRGINIA
Virginia Employment Commission

Ralph G. Cantrell
Commissioner

703 East Main Street

P. O. Box 1358
Richmond, Virginia 23211

August 17, 1983

Mr. Edward Rutledge
Regional Director
Mid-Atlantic Regional Office
2120 L Street, N. W., Room 510
Washington, D. C. 20037

Dear Mr. Rutledge:

Thank you for the report on the Commission's study of migrant workers on Virginia's Eastern Shore. We wish to make no comments at this time.

Sincerely,

Ralph G. Cantrell
Commissioner

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION
P.O. Box 6Q
RICHMOND 23216

August 23, 1983

Mr. Edward Rutledge
Regional Director
Mid-Atlantic Regional Office
2120 L Street, N.W., Rm. 510
Washington, D.C. 20037

Dear Mr. Rutledge:

Thank you for the opportunity to review and comment on the Commission's draft report regarding migrant education on the Eastern Shore of Virginia.

Several corrections have been annotated on the following pages:

1. Page 108 - - - Division of Compensatory Education ECIA Chapter 1 serves as the fiscal agent. This Division also directly supervises the migrant education program subgrantess.[18]
2. Page 108 Accomack
3. Page 108 Chapter 1
4. Page 116 Accomack
5. Page 116 [47]Winford Miller
6. Page 118 Supervisor
7. Page 119 Supervisor
8. Page 123 Migrant Education Program
9. Page 124 1982-83
10. Page 124 Ages 0 and 21

11. Page 125 Chapter 1

12. Page 125 1982-83

If our office can provide further assistance, please do not hesitate to contact us.

Sincerely,

Dr. N. Grant Tubbs
Administrative Director
Office of Special and Compensatory Education

NGT/ts

Enclosure

cc: Mr. C. L. Conyers
Mr. G. H. Irby

United States Department of Agriculture
Food and Nutrition Service
Mid-Atlantic Region
1 Vahlsing Center
CN 02150
Trenton, NJ 08650

SEP 13 1983

Mr. Edward Rutledge
Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

This has reference to the Virginia Advisory Committee's report on Migrant Workers on the Eastern shore, which was sent to our Field Office in Baltimore, Maryland and subsequently reached us for review and response to the relevant portions of the report that concern us.

We found two areas that are of interest to us -- the WIC Program that operates as a part of the Delmarva Migrant Health Project and the Food Stamp operations in one of the local Social Service Departments (not named), although some reference was made to problems of a delivery nature in Northhampton and Accomac Counties.

The WIC Program appears to be spoken of very favorably. There appears to be no problem of availability of this service, as far as we can see. We wish to comment, however, on the statement of Dr. Belle DeCormis Fears about all Migrants being financially and nutritionally eligible. While this is not wrong, without further qualification, it might give the reader the impression that entire groups of people could be considered as eligible based on demographic statistics. Our regulations are very clear that persons are to be considered for eligibility on an individual basis and according to medical standards prescribed for this program.

Further, we believe the report should note that the WIC Program services include the provision of (a) specific supplemental foods prescribed to address the health and nutritional needs of eligible persons and (b) nutrition education designed to emphasize the relationship between proper nutrition and good health.

We took note of the food stamp problems mentioned in this report, which were mainly references to interviews with four persons who were either advocates or farm workers. Nothing was mentioned of State and local office positions on the problems alluded to, which would have been beneficial in shedding some light on the situation and to offer a more balanced viewpoint.

Your report mentions that farmworkers experience problems in getting food stamps. This is illustrated by a quote that in part states "We have to litigate those problems for them on a regular basis". It is difficult for us to comment on this statement without knowing more of the background and the dates of the interviews. It was observed that the quote was taken from a transcript of Michael T. Robinson, p 187, which would be necessary for us to see if a proper response is to be given. We can state factually, however, that there has been monitoring of this situation during the present migrant season, and it appears that conditions have improved considerably over the previous season.

Mention is made of problems revolving around the crew leader. One problem noted is that crew leaders sometimes pick up all of the food stamps from the issuing office for the members of his crew. Such activity is legitimate as long as the crew leader is designated as an "authorized representative" in accordance with Federal regulations. If the crew leader is not designated as an authorized representative, the transaction is not legal and should be reported to the local office for investigation.

With regard to the reference in the report of needing a "certificate" from a crew leader to "sign up", certain types of information must be verified to establish eligibility for food stamps, and crew leaders are necessarily a primary source of such verification. Both FNS and the State were made aware of isolated instances where farm workers, without crew leaders, had problems obtaining proper verification during the 1982 migrant season, and State representatives instructed the local offices of proper procedures to be used in such cases. We have not been made aware of these problems occurring during the 1983 season.

The report also mentions that food stamp appeals are often not an option as migrants move before the appeal can be processed. Federal regulations and the State food stamp manual require expedited hearings for migrants, and to the best of our knowledge this process is being utilized properly by the eastern shore counties.

Please keep in mind that providing adequate service to migrant farm workers is a difficult problem. The eastern shore counties, not unlike other counties throughout the United States, have probmems handling their normal on going caseloads, let alone significant influxes of migrant workers. Farm workers have transportation problems, we are aware. The Haitian workers on the eastern shore also have problems communicating. Haitian Creole is not a written language, and a significant percentage of these farm workers are illiterate. However, our monitoring of the situation this year, as of this date, shows that the processing of migrant food stamp applications has improved over prior years.

Prior to finalizing this report, we offer the suggestion that the Commission interview State and local food stamp officials to provide balance to the final report.

We appreciate very much the information provided to us, and look forward to receiving a copy of the final report.

Sincerely yours,

ANDREW P. HORNSBY, Jr.
Administrator
Mid-Atlantic Region

Memorandum

Date: September 13, 1983

From: Joseph P. Ambrosino
Secretary's Regional Representative

Subject: Comments on Migrant Workers on Maryland's Eastern Shore Report

To: Edward Rutledge, Regional Director
US Commission on Civil Rights

In response to your request for comments regarding the above report, I am submitting the following:

1. In keeping with recommendations of National Commission on Excellence in Education, migrant students represent a special, educationally disadvantaged group which requires special curriculum materials and individual tutoring within a flexible learning environment to maximize each migrant child's educational potential.

2. Logistical and support services on federal, state, and local levels are critical in enabling migrant students to overcome barriers imposed by their constant transfers from state to state and school district to school district. Local community provisions of needed medical, dental, speech, nutrition, and other services to the economically disadvantaged migrant student are essential for productive learning to take place.

3. The introduction of computerized (MRTS) programs and methods in the identification, recruitment, and continued educational assessment of migrant student progress has contributed significantly to increased enrollment and improved quality of education for migrant students.

4. Expanded and extended interstate cooperation in removing barriers to migrant student educational progress and achievement will provide greater educational equity for migrant children. Facilitating instructional techniques, course credits, and graduation requirements to provide uniformity among states would be a major step forward in providing equal educational opportunities for every migrant student.

Thank you for the opportunity to comment on this document. If I can be of further assistance to you, please don't hesitate to contact me.

P. O. Box 10106
Richmond, Virginia 23240

August 19, 1983

Mr. Edward Rutledge
Regional Director
U. S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, NW, Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

We received your report on the Migrant Workers on Maryland's Eastern Shore. Your comments concerning Farmers Home Administration appears to be informative, concise and clear.

In our opinion, the report is satisfactory as it is written. We thank you for the opportunity to comment on the contents of this report.

Sincerely,

ROIE M. GODSEY
State Director

MGM/pdb

U.S. Department of Labor

Employment and Training Administration
P.O. Box 8796
Philadelphia, Pennsylvania 19101

Reply to the Attention of: III-TGR/MA

AUG 22 1983

Mr. Edward Rutledge
United States Commission
on Civil Rights
Mid-Atlantic Regional Office
2120 L Street N.W. - Room 510
Washington, D.C. 20037

Dear Mr. Rutledge:

This is in response to your letter of August 2, 1983, inviting our comments on the draft report prepared by your Virginia Advisory Committee on Migrant Workers. Based on the portion (pages 17-30) you submitted to us, we offer the following comments:

1. Page 23 - Regarding Virginia Employment Commission (VEC) recruitment of workers in foreign countries:

   The VEC recruits American workers. If insufficient domestic workers are available, then the employer may be authorized to secure temporary labor from other countries.

2. Page 29 - Regarding the deduction of an excise tax by the crewleaders from the wages paid to migrant workers:

   The Federal Unemployment Tax Act requires the payment to be made by the employer and the payment is a percentage of the wages earned by the worker. The payments are not to be deductions from the pay of the workers.

Thank you for the opportunity to comment on this information.

Sincerely,

William J. Haltigan

WILLIAM J. HALTIGAN
Regional Administrator

AUG 24 1983
Regional Office

COMMONWEALTH of VIRGINIA

COMMISSIONERS
ROBERT J. GREY, JR., CHAIRMAN
JOHN S. MASSAD
J. YOUNGER COGGIN

LARRY E. GILMAN, SECRETARY

Department of Alcoholic Beverage Control
2901 Hermitage Road

POST OFFICE BOX 27491
RICHMOND, VIRGINIA 23261
(804) 257-0605

August 29, 1983

Mr. Edward Rutledge
Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L. Street, N. W., Rm 510
Washington, D. C. 20037

Dear Mr. Rutledge:

I have been asked to respond to a study of migrant workers on the Eastern Shore of Virginia. We reviewed the draft and are in agreement with the testimony which indicates that crewleaders sell alcoholic beverages to migrants and deduct the cost from the money owed to the migrant. We have reason to believe that these costs are inflated by some crewleaders, even to the extent that the price has been doubled in some cases.

We know that some crewleaders have bought several gallons of alcoholic beverages during the course of a week, but as these beverages were transported legally, we could only surmise the ultimate destination and use. We have tried several enforcement strategies and have had some success in reducing the problem where the migrants obtain the alcohol from outside the camps.

Our major emphasis has been to infiltrate special agents into the system, and where we have been able to do this we have been very successful. However, the crewleaders as a general rule will not sell to anyone outside of his crew or camp. Additionally, this problem is compounded by their selling on "credit," and there is no money passed.

One of the programs implemented ten years ago was the Special Undercover Agent (SUA) to assist us in monitoring the migrant camps. We still have resources to devote to this program and have advised our resident agents to make use of this program where possible. Basically, we will hire anyone whose testimony is acceptable in court and employ this individual to function as a paid informer. This program is available to migrants or anyone else who wishes to do this type of work. The salary is the same as a new agent's, and all expenses are paid.

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We have employed many individuals in recent years, but there does seem to be a reluctancy on the part of the migrants to do this type of work. Without their support, we are limited to what we can accomplish in the camps.

I would not categorize our programs as being inadequate. I will say that the problem is difficult when dealing with crewleaders.

We will assist or help anyone trying to control this problem, and we welcome any information which will help us to enforce the laws in the camps.

If you need any clarification or confirmation, please do not hesitate to contact us.

Sincerely,

Raymond A. Little
Assistant Director
Regulatory Division

RAL/mwp

SEP 06 1983

U.S. Department of Labor

Employment Standards Administration
3535 Market Street
Philadelphia, Pennsylvania 19104

Reply to the Attention of:

August 17, 1983

Mr. Edward Rutledge
Mid-Atlantic Regional Office
2120 L Street, NW., Room 510
Washington, DC 20037

Dear Mr. Rutledge:

This is in response to your letter dated August 2, 1983 enclosing a draft copy of the Virginia Advisory Committee to the United States Commission on Civil Rights Report on migrant farmworkers on Virginia's Eastern Shore.

The report indicates in chapter 2, page 17, "Recruitment and Employment" that "the major federal law regulating recruitment of migrant workers in 1982 was the Federal Labor Contractor Registration Act". The correct title is Farm Labor Contractor Registration Act.

The statement at the end of page 17 that VEC administers MSPA is misleading and not factually correct. The Employment Standards Administration, Wage Hour Division is responsible for the administration and enforcement of MSPA. This should be changed to read that pursuant to a state agreement that was initially approved under FLCRA, the VEC is authorized to issue certificates of registration. The VEC has expressed its intention to continue this service by agreeing to submit a state plan under Section 513 of MSPA.

In regard to the Fair Labor Standards Act, page 32 of the draft, a statement should be added that the FLSA contains a complete overtime exemption for farmworkers thus most farmworkers do not have to be paid time and a half when they work over 40 hours in a week.

I would recommend that the Child Labor portion of the FLSA, last paragraph of page 32 be expanded to read as follows:

1) Youths aged 16 and above may work in any farm job at any time.

2) Youths aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor.

3) Youths aged 12 and 13 may work in jobs not declared hazardous outside school hours either with written parental consent or on the same farm where their parents are employed.

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The following information should be incorporated into the statistical data that is presented.

In Fiscal Year 1982, the Employment Standards Administration's Wage Hour Division conducted 47 compliance actions under the Farm Labor Contractor Registration Act on Virginia's Eastern Shore. These investigations required the expenditure of 526 hours. Fifteen housing inspections were conducted, six of which disclosed violations of the safety and health provisions. The Wage Hour Division could only conduct a housing inspection under FLCRA in those situations where the Farm Labor Contractor owned or controlled the housing.

Twenty-six Fair Labor Standards Act investigations were conducted on Virginia's Eastern Shore in FY 1982; $1832.00 was found due under Section six of the Fair Labor Standards Act to thirty-one employees.

Your invitation to comment in advance of publication of the report is appreciated.

Sincerely,

Charles M Angell

Charles M. Angell
Regional Administrator
Employment Standards Administration